

federal register

Monday
September 25, 1989

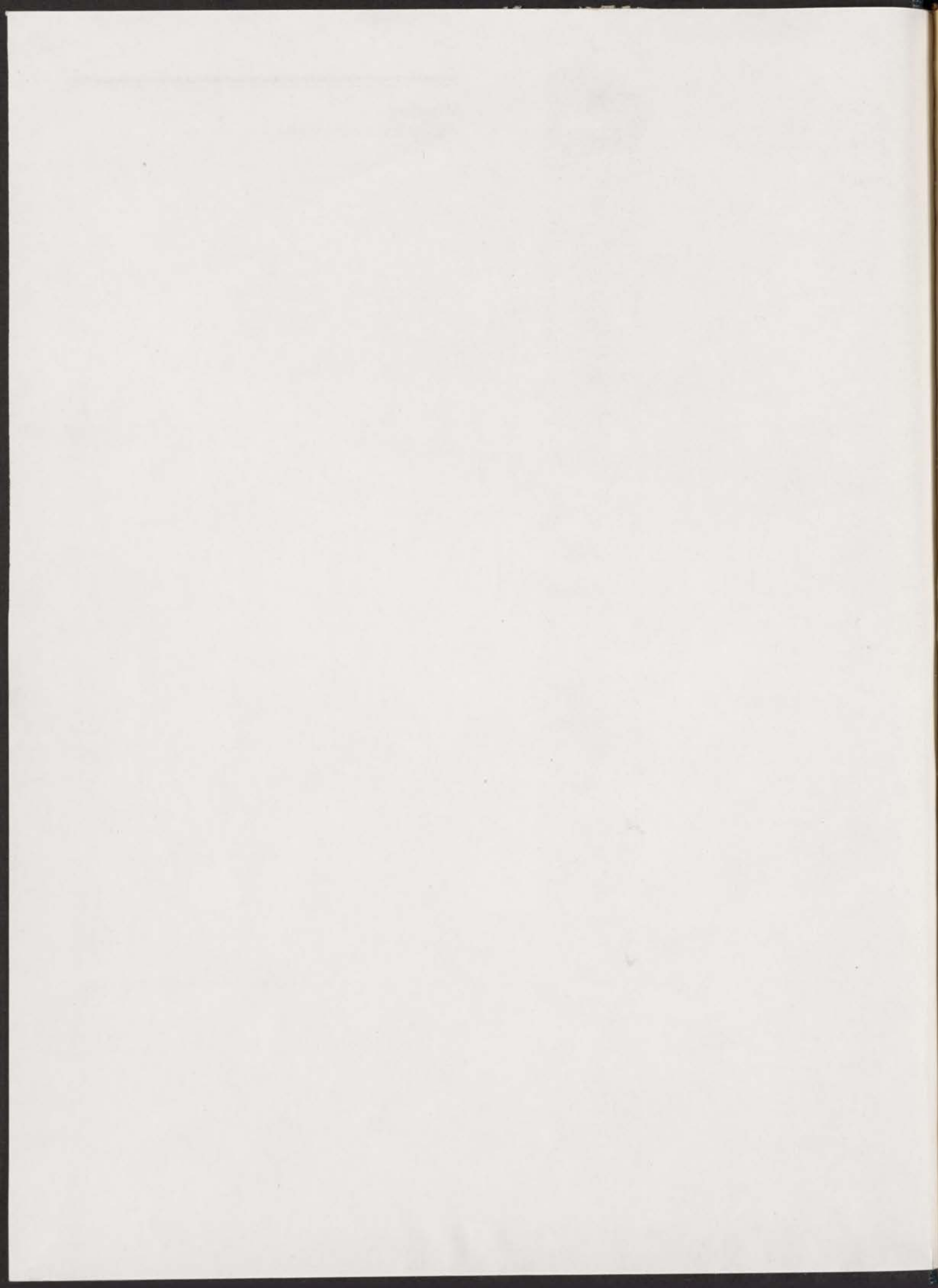
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Proclamation 6024 of September 21, 1989

The President

United States Marshals Bicentennial Day, 1989

By the President of the United States of America

A Proclamation

Two hundred years ago, on September 24, 1789, President George Washington signed into law Senate Bill Number One, known as the Judiciary Act. This Act established the Federal judicial system and created the Office of the United States Marshal. Only 2 days later, President Washington nominated the first United States marshals responsible for enforcing the Nation's laws and carrying out the orders of its courts.

Since then, United States marshals and their deputies have participated in many events shaping the development of our federal system of government. For more than a century, marshals and their deputies were the only civilian police power available to assist the President, the Congress, and the courts in upholding the rule of law in our rapidly expanding country.

As American pioneers pushed to the West, U.S. marshals faced grave dangers and constant hardship on the frontier. They later helped to maintain social order and facilitate the difficult task of Reconstruction following the Civil War. United States marshals also played a vital role in enforcing provisions of the Civil Rights Act during the turbulent years of the 1960's. During 2 centuries of service to our country, more than 300 United States marshals and deputy marshals have died in the line of duty. Their supreme sacrifice reveals the great personal risks that U.S. marshals continue to accept each day.

Today, United States marshals are engaged in virtually every Federal law enforcement initiative. Marshals provide for the security of Federal courts, including the protection of judges, witnesses, jurors, and other court personnel. They play a major role in the pursuit and capture of fugitives from justice, and Federal prisoners awaiting trial or sentencing are entrusted to their custody. They also operate the Witness Protection program, which is responsible for protecting persons who testify for the Government in major criminal cases.

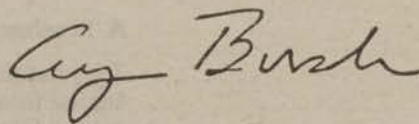
In one of their most important current functions, U.S. marshals administer the program under which the assets and profits of drug traffickers are seized, managed, and sold. The proceeds from such sales are used in our Nation's fight against crime and drug abuse. This summer alone, the U.S. Marshals Service led an anti-drug effort involving ten local police agencies in the Nation's Capital and its suburbs. That initiative resulted in the arrest of hundreds of career drug criminals and the closing of scores of suspected "crack houses."

An unflinching respect for the rule of law and the rights of individual Americans has motivated the courageous men and women of the United States Marshals Service throughout its history. Their legacy of personal sacrifice and public service merits the appreciation of every American.

In recognition of the vital efforts of our Nation's oldest law enforcement agency, the Congress, by Senate Joint Resolution 352 (Public Law 100-683) has designated September 24, 1989, as "United States Marshals Bicentennial Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 24, 1989, as United States Marshals Bicentennial Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities, in recognition of the United States marshals' important role in defending individual rights and upholding the rule of law.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-22742

Filed 9-21-89; 3:24 pm]

Billing code 3195-01-M

Presidential Documents

Proclamation 6025 of September 21, 1989

General Pulaski Memorial Day, 1989

By the President of the United States of America

A Proclamation

Forced to flee his native Poland after fighting in its unsuccessful struggle for independence, General Casimir Pulaski later became a hero of the American Revolutionary War. Benjamin Franklin once praised him as a man "famous throughout Europe for his bravery and conduct in defense of the liberties of his country." In the ultimate expression of that bravery, and in solidarity with the American colonists, Pulaski volunteered for the Continental Army and eventually became the leader of his own cavalry unit. While leading a charge during the siege of Savannah on October 9, 1779, this dauntless freedom fighter was mortally wounded. He died 2 days later.

Each year, on the October 11th anniversary of his death, we Americans pause to remember General Pulaski and the heartfelt convictions for which he gave his life. General Pulaski clearly understood that liberty is the God-given right of all men. He believed that the cause of freedom is universal, and, like many of his contemporaries, viewed the American struggle for independence as a decisive battle for the future of all freedom-loving peoples. The American Revolution, if successful, would be a resounding victory for the principles of individual liberty and representative government.

With the generous assistance of brave and selfless allies like General Pulaski, the American colonists did succeed in their quest for independence. And today, more than 2 centuries later, the triumphant call for freedom and self-government continues to reverberate throughout the world.

That call can be heard clearly in General Pulaski's homeland, where—despite years of repression by ruling Communist officials and Soviet military intervention in 1981—the Polish people have continued to demonstrate their fervent belief in the principles of freedom and self-determination. With faith, courage, and persistence, they have begun to reap the rewards of their efforts to obtain free elections, as well as political and economic reforms.

Today, we Americans offer our support and our prayers for the people of Poland as they continue seeking the blessings of freedom and representative government—blessings that General Casimir Pulaski helped win for us 210 years ago.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, October 11, 1989, as General Pulaski Memorial Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on the day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George H. W. Bush

[FR Doc. 89-22743

Filed 9-21-89; 3:25 pm]

Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 89-27 of September 15, 1989

Presidential Determination on Prepreg Production Equipment

Memorandum for the Secretary of State, the Secretary of Defense, the Secretary of Commerce

On August 18, 1989, the Secretary of Commerce exercised his authority under Section 5(f) of the Export Administration Act of 1979, as amended (the Act), 50 U.S.C. App. § 2404 (f) by determining that prepreg production equipment comparable to that currently requiring a validated license for export from the United States is available in fact to controlled countries from foreign sources in sufficient quantity so that the requirement of a validated export license for national security reasons would be ineffective in achieving its purpose.

Pursuant to the authority vested in me as President of the United States by Section 5(f) of the Act, I hereby determine that national security export controls on this item must be maintained notwithstanding foreign availability because their absence would prove detrimental to the national security of the United States.

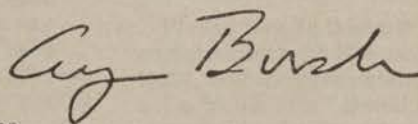
I direct the Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, to pursue negotiations with the source countries to eliminate the foreign availability of this item.

I direct the Secretary of Commerce to notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives no later than the commencement of negotiations that such negotiations are being commenced and why it is important to the national security that export controls on this item be maintained.

I delegate to the Secretary of Commerce the authority to extend negotiations to eliminate foreign availability and to maintain export controls on this item for an additional twelve month period beyond an initial six month period if the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of Defense, determines and certifies to the Congress that the negotiations are progressing and that the absence of export controls on this item would prove detrimental to the national security of the United States.

I hereby authorize and direct the Secretary of Commerce to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, September 15, 1989.



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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-170]

Oriental Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by adding an additional portion of Los Angeles County and a portion of Orange County in California to the list of areas designated as quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. This action imposes certain restrictions on the interstate movement of regulated articles from the quarantined areas.

DATES: Interim rule effective September 19, 1989. Consideration will be given only to comments received on or before November 24, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-170. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Dacus dorsalis* (Hendel), is a destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. The Oriental fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective on August 15, 1989, and published in the Federal Register on August 21, 1989 (54 FR 34477-34483, Docket Number 89-144) established the Oriental fruit fly regulations (7 CFR 301.93 *et seq.*, referred to below as the regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

The regulations, among other things, designated a portion of Los Angeles County in California as a quarantined area. This area remains infested with Oriental fruit fly.

However, the Oriental fruit fly has now been found in an additional area of Los Angeles County, California, and a portion of Orange County, California, as a result of recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. The regulations in § 301.93-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector. Accordingly, we are amending the regulations by adding the following area in Los Angeles and Orange Counties in California as a quarantined area:

Los Angeles County and Orange County— That portion of Los Angeles and Orange Counties in the Cerritos area bounded by a

line beginning at the intersection of Studebaker Road and Florence Avenue, then east along Florence Avenue to its intersection with Telegraph Road, then southeast along Telegraph Road to its intersection with Imperial Highway, then east along Imperial Highway to its intersection with Santa Gertrudes Avenue, then south along Santa Gertrudes Avenue to its intersection with Rosecrans Avenue, then east along Rosecrans Avenue to its intersection with Gilbert Street, then south along Gilbert Street to its intersection with Katella Avenue, then west along Katella Avenue to the point at which it becomes Willow Street, then west along Willow Street to its intersection with Bellflower Boulevard, then north along Bellflower Boulevard to its intersection with Imperial Highway, then east along Imperial Highway to its intersection with Studebaker Road, then north along Studebaker Road to the point of beginning.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of regulated articles from a portion of Los Angeles and Orange Counties in California. It appears that there are approximately 90 small entities in the quarantined area that may be affected by this rule. The small entities that may be affected include approximately 80 nurseries, 1 commercial grower of cucumbers and tomatoes, 1 commercial grower of Oriental persimmons, 1 community garden, 5 fruit markets, 2 farmers markets, and 1 swap meet.

These small entities comprise less than 1/2 of 1 percent of the total of small entities operating in California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the nurseries sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Oriental fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended to read as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c)

2. In § 301.93-3(c), the designation of the quarantined areas is amended by adding a new portion of Los Angeles County and a portion of Orange County in California following the listing for Los Angeles County, California, to read as follows:

§ 301.93-3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Los Angeles County and Orange County— That portion of Los Angeles and Orange Counties in the Cerritos area bounded by a line beginning at the intersection of Studebaker Road and Florence Avenue, then east along Florence Avenue to its intersection with Telegraph Road, then southeast along Telegraph Road to its intersection with Imperial Highway, then east along Imperial Highway to its intersection with Santa Gertrudes Avenue, then south along Santa Gertrudes Avenue to its intersection with Rosecrans Avenue, then east along Rosecrans Avenue to its intersection with Gilbert Street, then south along Gilbert Street to its intersection with Katella Avenue, then west along Katella Avenue to the point at which it becomes Willow Street, then west along Willow Street to its intersection with Bellflower Boulevard, then north along Bellflower Boulevard to its intersection with Imperial Highway, then east along Imperial Highway to its intersection with Studebaker Road, then north along Studebaker Road to the point of beginning.

Done in Washington, DC, this 19th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-22569 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-22-AD; Amendment 39-6325]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Empresa Brasileira de Aeronautica (EMBRAER) Models EMB-110P1 and EMB-110P2 airplanes, which requires a revision of the Airplane Flight Manual and Pilot's Operating Handbook to specify preflight checks of the safety restraining cable and locking pins, as well as modification of the right forward emergency exit. The FAA has received two reports of this exit opening during takeoff. The actions specified in this AD will prevent in-flight opening of this exit which could result in the exit striking the propeller and disabling the airplane.

EFFECTIVE DATE: October 24, 1989.

ADDRESSES: EMBRAER Service Bulletin (SB) No. 110-52-030, dated November 30, 1981, applicable to this AD may be obtained from Empresa Brasileira de Aeronautica S.A., P.O. Box 343-CEP, 12.225 Sao Jose dos Campos, Sao Paulo, Brazil. This information also may be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, 601 East 12th Street, Kansas City, Missouri 64108.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Jackson, FAA, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: There have been two recent reports of the right forward emergency exit on EMBRAER EMB-110 series airplanes opening during takeoff. As a result of one of these incidents, the emergency exit damaged the propeller. The FAA has determined that in order for the exit to completely open during takeoff, the safety restraining cable would have to be disconnected or fail. The FAA has further determined that this safety restraining cable was not connected on the two reported incidents. On both airplanes, compliance with EMBRAER SB No. 110-52-030, dated November 30, 1981, had not been accomplished. This SB requires the following modifications to the right forward emergency exit:

Installation of a stronger actuating handle stop, installation of longer locking pins and modification of the locking pin guides to permit visual inspection by the crew.

The Centro Technico Aeroespacial (CTA), which has the responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil, has not classified SB 110-52-030 as mandatory because the safety restraining cable limits the exit from opening completely. At the time SB 110-52-030 was issued, the FAA did not issue an AD for the same reason. Because of the two recent reports of in-flight opening, the FAA has determined that AD action is now required. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued requiring incorporation of the SB and a revision of the Airplane Flight Manual and Pilot's Operating Handbook (AFM/POH) pre-flight checklist specifying a check to insure the proper installation of the safety restraining cable and a visual check of the locking pins to prevent in-flight opening of the emergency exit on EMBRAER EMB-110 series airplanes. Because of the nature of this situation, the compliance time for revising the AFM/POH to specify a pre-flight check of the safety restraining cable is within the next 15 days after the effective date of this AD. The compliance time for the modifications specified by the SB is within the next 5 calendar months after the effective date of this AD, based upon parts availability from the manufacturer.

Because an emergency condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow

the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983; and 14 CFR 11.89.

2. By adding the following new AD:

Empresa Brasileira De Aeronautica S.A. (Embraer): Applies to Models EMB-110P1 and EMB-110P2 (all serial numbers (S/N)) airplanes, certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent the right forward emergency exit from opening during flight, which could damage the propeller, accomplish the following:

(a) Within the next 15 days after the effective date of this AD, revise the Pilot's Operating Handbook and CTA Approved Airplane Flight Manual, EMBRAER Publication No. TP-110P1/176, section 4, Pre-Flight Check, by making a pen and ink change to add the following check on the following airplanes:

(1) On Model EMB-110 airplanes, S/N 110146, 110153, 110156, 110157, 110161, 110165, 110184, 110186, 110189, 110190, 110192 thru 110283, 110285 thru 110346:

"Check for proper installation of the safety restraining cable on the right forward emergency exit."

(2) On all Model EMB-110 airplanes except S/N 110146, 110153, 110156, 110157, 110161, 110165, 110184, 110186, 110189, 110190, 110192 thru 110283, 110285 thru 110346:

"Check for proper installation of the safety restraining cable on the right forward emergency exit." and,

"Visually insure that the locking pins are properly engaged on the right forward emergency exit."

(b) Within the next 5 calendar months after the effective date of this AD for Model EMB-110 airplanes except S/N 110146, 110153, 110156, 110157, 110161, 110165, 110184, 110186, 110189, 110190, 110192 thru 110283, 110285 thru 110346:

(1) Modify the right forward emergency exit in accordance with EMBRAER Service Bulletin 110-52-030, dated November 30, 1981, and

(2) Revise the Pilot's Operating Handbook and CTA Approved Airplane Flight Manual, EMBRAER Publication No. TP-110P1/176, section 4, Pre-Flight Check, by making a pen and ink change which follows the previous pen and ink change specified in paragraph (a)(1) above, to add the following check:

Visually insure that the locking pins are properly engaged on the right forward emergency exit.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial compliance times, which provides an equivalent level of safety, may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office, at the above address. All persons affected by this directive may obtain copies of the document referred to herein upon request to Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP, 12.225 Sao Jose dos Campos, Sao Paulo, Brazil; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 24, 1989.

Issued in Kansas City, Missouri, on September 8, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-22541 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-69-AD; Amdt. 39-6333]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which requires as an interim measure, the installation of a placard on the door of certain wardrobe assemblies limiting

the use of the wardrobe as a coat rack only, and subsequent modification of the door latch. This amendment is prompted by a report of a wardrobe door which became unlatched and allowed the contents to shift into the patch of the flight crew door, preventing it from being opened. This condition, if not corrected, could hinder the emergency evacuation of the airplane.

EFFECTIVE DATE: October 30, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE-173; telephone (516) 791-6427. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain de Havilland Model DHC-8-100 series airplanes, which requires, as an interim measure, installation of a placard on the door of certain wardrobe assemblies limiting the use of the wardrobe as a coat rack only, and subsequent modification of the door latch, was published in the *Federal Register* on June 21, 1989 (54 FR 26047).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter fully supported the rule, but recommended that it be issued as an immediate adopted rule to assure timely action to prevent blocking of the flight crew door and hindering emergency evacuation of the aircraft. The FAA does not concur with the commenter's suggestion. Although the FAA recognizes the unsafe condition presented by this situation, as was described in the preamble to the Notice, there are safeguard actions currently in place which provide an adequate level of safety in the interim. Specifically, the door in its original type certificate design configuration is capable of absorbing design loads when both the top and bottom latches are secured

properly. In addition, there is currently a placard affixed to the wardrobe which states the ice chest must be secured during takeoff and landing. In developing this AD action, the FAA considered these items and determined that it was not impracticable to provide notice and the opportunity for public comment on the proposed requirements.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$13,440.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., de Havilland

Division: Applies to Model DHC-8-100 series airplanes, Serial Numbers 3 through 106 inclusive, equipped with wardrobe assembly 82520145, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the wardrobe door from becoming unlatched and allowing the shifting of the contents into the path of the flight crew door, thereby hindering emergency evacuation, accomplish the following:

A. Within 15 days after the effective date of this AD, install a placard on the wardrobe door, stating the following: "THIS WARDROBE IS RESTRICTED FOR USE AS A COAT/GARMENT RACK."

B. Within 60 days after the effective date of this AD, modify the wardrobe door latch and strikers, in accordance with Boeing of Canada, Ltd., de Havilland Division, Service Bulletin No. 8-25-35, Revision "B," dated January 27, 1989. Once this modification is accomplished, the placard required by paragraph A., above, may be removed.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 30, 1989.

Issued in Seattle, Washington, on September 13, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-22540 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-82-AD; Amdt. 39-6331]

Airworthiness Directives; Fokker Model F-27 Series Airplanes**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes, which currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration airspeed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could lead to reduced structural capability of the wing. This amendment requires a one-time inspection of the splice parts of Wing Station 7915, and repair, if necessary. This amendment is prompted by the development of a repair procedure to reinforce unsatisfactory splice parts at Wing Station 7915.

EFFECTIVE DATE: October 30, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 88-17-02 RI, Amendment 39-6127 (54 FR 4769; January 31, 1989), applicable to Fokker Model F-27 series airplanes, to require a one-time inspection of the splice parts at Wing Station 7915, and repair, if necessary, was published in the Federal Register on June 14, 1989 (54 FR 25287).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the two comments received.

Both commenters supported the rule. However, one commenter noted that the economic analysis paragraph in the preamble to the Notice (1) estimated that only 13 airplanes are affected when more are actually affected; (2) failed to include the access or close-up time of 12 to 14 manhours; and (3) failed to include the time required to accomplish the repair in accordance with part 2 of the service bulletin. The FAA partially concurs with this statement. After investigating this point further with the manufacturer's representative, the FAA has determined that currently there are 33 U.S.-registered airplanes affected by this AD. Accordingly, the economic analysis paragraph, below, has been changed to reflect this information and to revise the total cost impact figure.

The economic analysis, however, is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, i.e., "repair, if necessary," since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$13,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the

criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6127 (54 FR 4769; January 31, 1989), AD 88-17-02 R1, as follows:

Fokker: Applies to Model F-27 series airplanes, serial numbers 10346 to 10684, inclusive; and serial numbers 10105 to 10345, inclusive, if retrofitted with outer-wing serial number 246 or higher; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing, accomplish the following:

A. Within 24 hours after February 15, 1989 (the effective date of Amendment 39-6127), incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM. "For airplanes operating at weights over 32,000 lbs.: Speed Limitation V_B: 165 KIAS (168 KTS CAS)"

B. Within 24 hours after February 15, 1989 (the effective date of Amendment 39-6127), install a placard near each airspeed indicator, stating the following: **FOR AIRPLANES OPERATING AT WEIGHTS OVER 32,000 LBS.: SPEED LIMITATION V_B: 165 KIAS (168 KTS CAS)**

C. Within six months after the effective date of this amendment, perform a one-time inspection of the splice parts at Wing Station 7915, in accordance with the Accomplishment Instructions, Part 1, of Fokker Service Bulletin F27/57-63, Revision 1, dated January 25, 1989.

1. If no defective splice parts are found, and if the structural strength of the wing splice is determined to be satisfactory in accordance with the limits specified in the service bulletin, no further action is required. The airspeed restriction required by paragraphs A. and B., above, is no longer required, and the AFM limitation and placard may be removed.

2. If defective splice parts are found or if the structural strength of the wing splice is determined to be unsatisfactory in

accordance with the limits specified in the service bulletin, within one year after the effective date of this amendment reinforce all unsatisfactory splice parts at Wing Station 7915 in accordance with the Accomplishment Instructions, part 2, of Fokker Service Bulletin F27/57-63, Revision 1, dated January 25, 1989. Following this modification and a determination that the wing splice strength is satisfactory, the airspeed restriction required by paragraphs A. and B. above, is no longer required, and the AFM limitation and placard may be removed.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-6127, AD 88-17-02 R1.

This amendment becomes effective October 30, 1989.

Issued in Seattle, Washington, on September 13, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 89-22542 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-8]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several VOR Federal Airways located in the northeast portion of the United States which lead into and around the Toronto, Ontario, Canada, metropolitan area. These airway changes are the result of an agreement

between the United States and Canada to interface with traffic flow reversal plans into and out of Canadian airspace surrounding Toronto International Airport. The Cleveland air route traffic control center's (ARTCC) airspace containing the arrival/departure routes to/from Toronto, Ontario, Canada, has been readjusted to alleviate congestion and compression of air traffic in that area. This action will improve traffic flow in the area and reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., November 16 1989.

FOR FURTHER INFORMATION CONTACT:

Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign VOR Federal Airways V-37, V-176, V-216, V-276, V-320, V-443, and V-522 (54 FR 22445). This amendment is the result of an agreement between the United States and Canada to interface with traffic flow reversal plans into and out of Canadian airspace surrounding Toronto International Airport. The alteration of V-176 does not conform with the arrival/departure flow in the Toronto terminal area and Transport Canada has asked that V-176 not be amended. Therefore, V-176 will not be amended as proposed in the NPRM. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Air Transport Association's Central Regional Office wrote in support of the airway changes. They stated that the changes will improve the flow of air traffic, reduce air traffic congestion, and provide additional safety for air traffic. Except for editorial changes and the removal of V-176 from this docket, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal Airways located in the northeast portion

of the United States which lead into and around the Toronto, Ontario, Canada, metropolitan area. These airway changes are the result of an agreement between the United States and Canada to interface with traffic flow reversal plans into and out of Canadian airspace surrounding Toronto International Airport. The Cleveland ARTCC's airspace, consisting of arrival/departure routes to/from Toronto, Ontario, Canada, has been readjusted to alleviate congestion and compression of air traffic in that area. This action will improve traffic flow in the area and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-37 [Amended]

By removing the words "to Ash, ON, CANADA." and substituting the words "INT Erie 010° and Toronto, ON, Canada, 210° radials; to Toronto"

V-216 [Amended]

By removing the words "Kleinburg, ON, Canada." and substituting the words "INT Peck 084° and Toronto, ON, Canada, 248° radials; to Toronto."

V-276 [Amended]

From Erie, PA; via Franklin, PA; Clarion, PA; Tyrone, PA; INT Tyrone 096° and Ravine, PA 279° radials; Ravine; Yardley, PA; Robbinsville, NJ; INT Robbinsville 112° and Coyle, NJ, 090° radials.

V-320 [Amended]

By removing the words "to Toronto, ON, Canada." and substituting the words "INT Peck 072° and Toronto, ON, Canada, 276° radials; to Toronto."

V-443 [Amended]

By removing the words "Aylmer." and substituting the words "Aylmer; INT Aylmer 051° and Toronto, ON, Canada, 210° radials; to Toronto."

V-522 [Amended]

By removing the words "to Dunkirk, NY." and substituting the words "Dunkirk, NY; INT Dunkirk 356° and Toronto, ON, Canada, 151° radials; to Toronto. The airspace within Canada is excluded."

Issued in Washington, DC, on September 11, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22549 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71**[Airspace Docket No. 88-AWA-3]****Establishment of an Airport Radar Service Area; San Jose, CA**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; disposition of comments.

SUMMARY: On March 6, 1989, the FAA published a final rule on the San Jose Airport Radar Service Area (ARSA) requesting comments on two particular aspects: (1) The ARSA extension described as "Area B"; and (2) the revision of agency policy to consider extension of the ARSA airspace beyond 10 nautical miles (NM) from the primary airport and above 4,000 feet above airport elevation, on a very limited basis, where there would be a clear safety benefit. This action transmits the comments received along with the FAA's determination.

EFFECTIVE DATE: The effective date of the final rule continues to be 0901 U.T.C., April 6, 1989.

FOR FURTHER INFORMATION CONTACT:

Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:**History**

On December 30, 1988, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate an ARSA at San Jose International Airport, CA (53 FR 53272). On March 6, 1989, (54 FR 9406) the FAA published a final rule; request for comments, with the comment period ending on June 6, 1989. Comments were specifically requested on: (1) The ARSA extension described as "Area B"; and (2) the revision of agency policy to consider extension of ARSA airspace beyond 10 NM from the primary airport, and above 4,000 feet above airport elevation on a very limited basis, where there would be a clear safety benefit. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments to the FAA. Section 71.501 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Discussion of comments

Fourteen comments were received before the closing date concerning the 10- to 15-mile extension of the San Jose ARSA (Area B). All comments were fully considered. The FAA concluded that Area B significantly increases safety for aircraft approaching and departing the airport from other aircraft transiting the area. Therefore, Area B will remain unaltered.

Fourteen comments were received concerning the revision of agency policy. Eleven commenters wrote accepting the revision of agency policy to extend ARSA airspace beyond 10 NM of the primary airport where there would be a clear safety benefit. Six of the eleven commenters wrote accepting to revise agency policy to extend ARSA airspace above 4,000 feet above the airport elevation where there would be a clear safety benefit. While the remaining five of the eleven commenters concurred with the ARSA airspace extension beyond 10 NM, they did not concur with raising the upper limits of an ARSA. Three commenters wrote objecting to revising agency policy concerning ARSA airspace.

The majority of commenters recommended that Area B be retained, and stated that this extension provides

necessary airspace to protect aircraft approaching the San Jose International Airport.

Some commenters concurred with the 10- to 15-mile extension of airspace, but felt that the ceiling should be consistent with the entire ARSA. These commenters felt that a ceiling of 6,000 feet mean sea level (MSL) would be too restrictive and confusing for pilots wishing to circumnavigate the extended area.

The FAA does not believe that retention of Area B is unduly restrictive or confusing to general aviation. Traffic desiring to transit this area may do so by contacting air traffic control or avoid it by flying over, under or around the area. In addition, the 6,000-foot MSL ceiling was designed to accommodate procedures used by aircraft landing and departing San Jose International Airport utilizing Runway 30L. When Runway 30L is active, noise abatement procedures require landing aircraft to maintain an altitude at or above 5,000 feet 15 distance measuring equipment (DME) miles from the San Jose very high frequency omnidirectional radio range (VOR).

Two commenters requested that Area B have boundaries that reflect visual landmarks. The FAA considered using visual landmarks to delineate Area B boundaries. However, the airspace required to provide the greatest protection for aircraft and to meet operational needs did not coincide with prominent geographical landmarks.

Two commenters wrote in objection to Area B with no recommendations.

The designation of ARSA airspace beyond the 10 NM radius of the San Jose International Airport has enhanced safety without adversely affecting general aviation operations. The FAA believes that Area B provides a clear safety benefit for airspace users around the San Jose International Airport and therefore, warrants the variation from the standard ARSA configuration.

List of Subjects in 14 CFR part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 89-5137, as published in the **Federal Register** on March 6, 1989 (54 FR 9406), is confirmed without change.

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on September 8, 1989.

Harold W. Becker,
Manager, Airspace-Rules and Aeronautical
Information Division.

[FR Doc. 89-22539 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-15]

Revision of Ukiah, California Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the transition area at Ukiah, California. This action will provide controlled airspace for the execution of instrument approach procedures to Ukiah Municipal Airport, Ukiah, California.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

History

On June 19, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area at Ukiah, California (54 FR 25729).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.8E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the transition area at Ukiah, California. This action provides controlled airspace for the execution of instrument approach procedures to Ukiah Municipal Airport, Ukiah, California.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ukiah, CA [Revised]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Ukiah Municipal Airport (lat. 39°07'34" N., long. 123°11'59" W.); and with 2.5 miles each side of the Ukiah localizer course extending from the 5 mile radius area to 26 miles north of Runway 15 threshold; that airspace extending upward from 1,200 feet above the surface within a 20 mile radius of the Mendocino, California VORTAC bounded on the E by the W edge of V-25, that airspace S of Ukiah bounded on the E by the W edge of V-25, on the S by lat. 38°43'30" N., on the W by long. 123°23'15" W., and that airspace between the 20 and 24 mile arcs of the Red Bluff, California VORTAC bounded on the NW by the NW edge of V-199 and on the SE by the SE edge of V-25; that airspace extending upward from 7,500 feet MSL between the 24 and 45 mile arcs of the Red Bluff, California VORTAC bounded on the NW by the NW edge of V-199 and the SE by the SE edge of V-25; that airspace extending upward from 8,500 feet MSL bounded on the NE by a 45 mile arc of the Red Bluff VORTAC, on the SE by the SE edge of V-25, on the S and SW by the N edge of V-200 and a 20 mile arc of the Mendocino VORTAC, and on the NW by the NW edge of V-199; that airspace extending upward from 9,500 feet MSL bounded on the SE by the NW edge

of V-199, on the W by the E edge of V-27, and on the N by a line 9 miles S of a parallel to the Red Bluff VORTAC 291° and Fortuna VORTAC 110° radials, excluding the airspace bounded by a line from lat. 39°32'00" N., long. 123°27'00" W., to lat. 39°32'00" N., long. 123°11'30", to lat. 39°21'30" N., long. 123°04'45" W., to lat. 39°18'45" N., long. 123°07'00" W., then via the 20 mile radius of the Mendocino, California VORTAC to lat. 39°20'30" N., long. 123°20'15" W., to lat. 39°32'00" N., long. 123°27'00" W. This 1,200 foot control area excludes the Ukiah Airport 700 foot transition area extension. That airspace extending upward from 5,300 feet MSL bounded on the E by the SW edge of V-27 and on the W by the W/SW edge of V-494.

Issued in Los Angeles, California on September 1, 1989.

Merle D. Clure,

Asst. Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 89-22544 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ANM-5]

Alteration of VOR Federal Airway V-160; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters VOR Federal Airway V-160 from Blue Mesa, CO, to Denver, CO. This airway will be used by aircraft landing at satellite airports in the Denver terminal area. Extending V-160 will benefit air traffic control as well as pilots by providing a better navigational aid.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On July 5, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-160 from Blue Mesa, CO, to Denver, CO (54 FR 28074). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as

that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters V-160 from Blue Mesa, CO, to Denver, CO. This airway will be utilized by arrivals to satellite airports in the Denver terminal area. This action will enhance flow management, decrease controller workload, and benefit pilots landing at satellite airports in the Denver terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-160 [Amended]

By removing the words "From Denver, CO," and substituting the words "From INT Blue Mesa, CO, 064° and Denver, CO, 212° radials; Denver;"

Issued in Washington, DC, on September 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22550 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 88-ACE-19]

Revocation of Transition Area; Ida Grove, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule—correction.

SUMMARY: This action corrects the reason why the 700-foot transition area at Ida Grove, Iowa, was revoked. The original final rule document incorrectly stated that the nondirectional radio beacon (NDB) had been removed. In actuality, the instrument approach procedure based on the NDB has been canceled, negating the need for the transition area at Ida Grove.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1989, the FAA published a final rule which would amend § 71.181 of part 71 of the Federal Aviation Regulations (FAR) so as to revoke the transition area at Ida Grove, Iowa (54 FR 29891, FR Doc. 16668). This document incorrectly stated that the NDB had been removed, thereby canceling the instrument approach procedure. In fact, the instrument approach procedure based on a navigational aid at the Ida Grove, Iowa Airport has been canceled, thereby eliminating the need for a transition area at Ida Grove to protect this approach. Action is taken herein to correct the error. Since this amendment only corrects a minor error and imposes no additional burden on the public, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Ida Grove, IA [Removed]

Revoke the Ida Grove, Iowa, transition area.

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on September 5, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-22545 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-25]

Alteration of Transition Area; Broken Bow, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Broken Bow, Nebraska. The Broken Bow VOR has been renamed Custer County VOR. Accordingly, the transition area

description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT:

Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71 is to alter the transition area description at Broken Bow, Nebraska. The name of the Broken Bow VOR has been changed to Custer County VOR. Accordingly, alteration of the Broken Bow transition area description is necessary to reflect this name change. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Broken Bow, NE [Revised]

That airspace extending upward from 700 ft. above the surface within a 7 mile radius of Broken Bow Municipal Airport (lat. 41°26'05" N., long. 99°38'25" W.); and within 6 miles each side of the Custer County VOR 323° radial extending from the 7 mile radius area to 8.5 miles northwest of the VOR.

This amendment becomes effective at 0901 u.t.c. January 11, 1990.

Issued in Kansas City, Missouri, on August 30, 1989.

Clarence E. Newbern,
Manager, Air Traffic Division.

[FR Doc. 89-22546 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-26]

Alteration of Transition Area; Cambridge, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Cambridge, Nebraska. The Cambridge nondirectional radio beacon (NDB) has been renamed Harry Strunk NDB. Accordingly, the transition area description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT:

Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) is to alter the transition area description at Cambridge, Nebraska. The name of the Cambridge NDB has been changed to Harry Strunk NDB. Accordingly, alteration of the Cambridge transition area description is necessary to reflect this name change. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Cambridge, NE [Revised]

That airspace extending upward from 700 ft. above the surface within a 7 mile radius of the Cambridge Municipal Airport (lat. 40°18'20" N., long. 100°09'43" W.); within 3 miles each side of the Harry Strunk NDB (lat. 40°18'16" N., long. 100°09'26" W.) 165° bearing extending from the 7 mile radius area to 8.5 miles southeast of the airport; within 3 miles each side of the NDB 326° bearing extending from the 7 mile radius area to 8.5 miles northwest of the airport.

This amendment becomes effective at 0901 UTC January 11, 1990.

Issued in Kansas City, Missouri, on September 1, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-22536 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR part 71

[Airspace Docket Number 89-ACE-02]

Designation of Transition Area—Minden, NE**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; correction.

SUMMARY: This action corrects the legal description of the Minden, Nebraska, transition area. The original Final Rule document designating this transition area incorrectly described the coordinates as "(lat. 40°30'47" N., long. 98°56'42" W.)." The correct coordinates are "(lat. 40°30'53" N., long. 98°56'44" W.)."

EFFECTIVE DATE: 0901 UTC, November 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:**History**

On July 13, 1989, the FAA published a Final Rule which amended § 71.181 of part 71 of the Federal Aviation Regulations so as to designate a transition area at Minden, Nebraska (54 FR 29539, FR Doc. 89-16466). This action corrects the geographic coordinates for Pioneer Village Field which were incorrectly described as "(lat. 40°30'47" N., long. 98°56'42" W.)." The correct geographic coordinates are "(lat. 40°30'53" N., long. 98°56'44" W.)." This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Corrected]

2. Pioneer Village Field, Minden, Nebraska [Corrected] By removing "(lat. 40°30'47" N., long. 98°56'42" W.)." and adding "(lat. 40°30'53" N., long. 98°56'44" W.)."

Issued in Kansas City, Missouri, on August 29, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-22547 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-27]

Alteration of Transition Area; O'Neill, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at O'Neill, Nebraska. The O'Neill, Nebraska, Municipal Airport has been renamed The O'Neill Municipal-John L. Baker Field. Action is also taken herein to delete the 1200-foot transition area from the description. Accordingly, the transition area description is being altered to reflect these changes.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT:

Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:**The Rule**

The purpose of this amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) is

to alter the transition area at O'Neill, Nebraska. The O'Neill, Nebraska, Municipal Airport has been renamed The O'Neill Municipal-John L. Baker Field. Also, this transition area presently includes a 1200-foot airspace description. Since the Nebraska transition area already provides for that airspace, it is unnecessary to have it reiterated in the O'Neill, Nebraska transition area designation. Accordingly, alteration of the O'Neill, Nebraska transition area description is necessary to reflect the name change and eliminate redundancy.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

Since this action is a minor technical amendment, eliminates a redundancy, does not require charting changes, and decreases the size of the transition area, it is an amendment in which the public would not be particularly interested. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending Section 71.181 as follows:

O'Neill, NE [Revised]

That airspace extending upward from 700 ft. above the surface within a 5.5 mile radius of The O'Neill Municipal-John L. Baker Field (Lat. 42°28'15" N., long. 98°41'15" W.); within 3.5 miles each side of the O'Neill VORTAC 315° radial, extending from the 5.5 mile radius to 12 miles northwest of the VORTAC and within 3 miles each side of the O'Neill VORTAC 148° radial, extending from the 5.5 mile radius to 8.5 miles southeast of the VORTAC.

This amendment becomes effective at 0901 u.t.c. January 11, 1990.

Issued in Kansas City, Missouri, on September 1, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-22537 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-28]

Alteration of Transition Area; Scottsbluff, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Scottsbluff, Nebraska. The Scottsbluff County Airport, Scottsbluff, Nebraska, has been renamed William B. Heilig Field. Accordingly, the transition area description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:**The Rule**

The purpose of the amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) is to alter the transition area description at Scottsbluff, Nebraska. The Scottsbluff County Airport, Scottsbluff, Nebraska, has been renamed William B. Heilig Field. Accordingly, alteration of the Scottsbluff Transition area description is necessary to reflect this name change. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6E, dated January 3, 1989.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending 71.181 as follows:

Scottsbluff, NE [Revised]

That airspace extending upward from 700 ft. above the surface within a 9.5 mile radius of the William B. Heilig Field (lat. 41°52'40" N., long. 103°35'47" W.); within 4.5 miles south and 9.5 miles north of the Scottsbluff VORTAC 079° radial extending from the 9.5 miles radius to 13 miles east of the VORTAC; within 4.5 miles southwest and 9.5 miles northeast of the ILS localizer southeast course extending from the 9.5 miles radius to 13 miles southeast of the outer marker; within 5 miles northeast and 9.5 miles southwest of the ILS localizer northwest course extending from the 9.5 miles radius to 17.5 miles northwest of the airport; within 4.5 miles south and 4.5 miles north of the Scottsbluff VORTAC 256° radial extending from the 9.5 mile radius to 19.5 miles west of the VORTAC.

This amendment becomes effective at 0901 U.T.C. January 11, 1990.

Issued in Kansas City, Missouri, on September 1, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-22538 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-29]

Alteration of Transition Area; Superior, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Superior, Nebraska, as reflected in Order 7400.6E, Compilation of Regulations. The extensions are listed in magnetic rather than true north and the lengths are not correct. The area is defined properly on aeronautical charts. Accordingly, the transition area description, as reflected in Order 7400.6E, is being altered to reflect the correct information.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:**The Rule**

The purpose of this amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) is to alter the transition area description at Superior, Nebraska, as reflected in Order 7400.6E, Compilation of Regulations. The extensions are listed in magnetic rather than true north and the lengths are incorrectly cited. The transition area is properly defined on the aeronautical charts. This action does not change the size or shape of the transition area, nor does it require a charting change. Since the amendment will only change the transition area description in Handbook 7400.6E and not the airspace configuration, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public would not be particularly interested.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Superior, NE [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Superior Municipal Airport (lat. 40°03'00" N., long. 98°03'45" W.), and within 2.5 miles each side of the 031° radial of the Mankato VORTAC, extending from the 5-mile radius to 6 miles northeast of the airport and within 2.5 miles each side of the 034° radial of the Mankato VORTAC, extending from the 5-mile radius to 7 miles southwest of the airport.

This amendment becomes effective at 0901 u.t.c., January 11, 1990.

Issued in Kansas City, Missouri, on September 1, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-22548 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 89-ASW-22]

Amend Time of Designation of Restricted Areas R-5103 A, B, C, and D, McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Areas R-5103 A, B, C, and D, McGregor, NM. This action is taken to provide more efficient management of the airspace by accurately reflecting the actual times utilized. This action is a result of an FAA special use airspace review and results in a lessening of a burden on the flying public.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Ken McElroy, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7686.

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the times of designation for Restricted Areas R-5103 A, B, C, and D, McGregor, NM. The FAA conducted a special use airspace review of the McGregor Range in fiscal year 1989. During this review it was determined that the published times of use did not reflect the actual time of use. This action reduces the time of use of R-5103 A, B, C, and D from continuous to 0700-2400 local time, other times by NOTAM. The accurate time of designation will lessen the burden on the flying public; therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.51 [Amended]

2. Section 73.51 is amended as follows:

R-5103A McGregor, NM [Amended]

By removing the present time of designation and substituting the following:

Time of designation. 0700-2400 local time; other times by NOTAM.

R-5103B McGregor, NM [Amended]

By removing the present time of designation and substituting the following:

Time of designation. 0700-2400 local time; other times by NOTAM.

R-5103C McGregor, NM [Amended]

By removing the present time of designation and substituting the following:

Time of designation. 0700-2400 local time; other times by NOTAM.

R-5103D McGregor, NM [Amended]

By removing the present time of designation and substituting the following:

Time of designation. 0700-2400 local time; other times by NOTAM.

Issued in Washington, DC, on September 11, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22543 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[T.D. 8258]****RIN 1545-AL26****Allocation of Income Attributable to Certain Notional Principal Contracts Under Section 863(a)****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Corrections to temporary regulations (T.D. 8258).

SUMMARY: This document contains corrections to the Federal Register publication for Tuesday, August 1, 1989, at 54 FR 31672 of the temporary regulations. The temporary regulations set forth the source of income attributable to certain notional principal contracts (notional principal contract income).

FOR FURTHER INFORMATION CONTACT: Charles T. Plambeck of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service at 202-566-6284 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The temporary regulations (T.D. 8258) that are the subject of these corrections contain amendments to the Income Tax Regulations (26 CFR part 1) under section 863(a) of the Internal Revenue Code of 1986.

Need for Corrections

As published, the temporary regulations contain errors which may prove to be misleading and are in need of clarification.

Corrections of Publication

Accordingly, the publication of the temporary regulations which were the subject of FR Doc. 89-17826, are corrected as follows:

Paragraph 1. On page 31673, column 3, in the instructional paragraph 1, the authority citation language "Authority: 26 U.S.C. 7805. * * * Sections 1.863-1T(d) and 1.863-7T are issued under 26 U.S.C. 863(a)." is corrected to read "Authority: 26 U.S.C. 7805. * * * Section 1.863-7T is issued under 26 U.S.C. 863(a)."

§ 1.863-7T(d)(2) [Amended]

Par. 2. On page 31674, column 2, the first line of § 1.863-7T(d)(2), the language "Assume that during 1990 X had net" is corrected by deleting the

word "net" to read "Assume that during 1990 X had".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-22469 Filed 9-22-89; 8:45 am]

BILLING CODE 4830-01-M**DEPARTMENT OF TRANSPORTATION****Saint Lawrence Seaway Development Corp.****33 CFR Part 402****Tariff of Tolls****AGENCY:** Saint Lawrence Seaway Development Corporation.**ACTION:** Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Corporation and the Authority have increased the commodity tolls and vessel charges by approximately 4.5% for the 1989 and approximately 4.5% for the 1990 navigation seasons at the Welland Canal section and at the Montreal-Lake Ontario section of the St. Lawrence Seaway. (All the Welland Canal revenues accrue to the Authority.) Also, the Corporation now receives 25% of the Montreal-Lake Ontario revenues, a change from the 27%. All of the Corporation's share of these revenues, however, will be returned to the person paying the toll or charge in accordance with section 805 of the Water Resources Development Act of 1986.

The Corporation and the Authority have also reclassified lumber from general cargo to bulk, are removing mill feed from the classification "feed grains", and changing the provision concerning the Welland Canal lockage charge for vessels in tandem to specify cargo vessels in tandem. The Corporation and the Authority have reduced the passenger charge on the Welland Canal and eliminated the tariff for government aid cargoes and for nonprofit organization or cooperative food cargoes intended for humanitarian or development assistance overseas. Finally, the Corporation and the Authority have deleted the language in subsection 402.4(a) concerning the toll level reached in 1983 as it is superfluous.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0091.

SUPPLEMENTARY INFORMATION: The definition of "bulk cargo" (at 33 CFR 402.3(b)(7)) is amended to add lumber. Lumber had been included under general cargo, for which rates are higher. The change results in an approximately \$1.47 per ton reduction throughout the system. The reduction encourages certain lumber shipments to transit the seaway that otherwise would not because of the higher, previous rate.

The definition of "feed grains" (at 33 CFR 402.3(g)) is amended to delete mill feeds containing not more than 35% of ingredients other than grain or grain products, which are manufactured product and therefore should not be considered feed grains.

The definition of "Government aid cargo" (at 33 CFR 402.3(j)) is amended to include certain food cargoes that is owned or financed by nonprofit organizations or cooperatives and intended for use in humanitarian or development assistance overseas. These are the type of shipments presently covered in the United States by Title II of the P.L. 480 Food for Peace Program. In addition, the tolls for all "Government aid cargoes" (as set forth in the Tolls Schedule in 33 CFR 402.8) are eliminated to encourage use of the system for both Canadian and United States Government owned or financed humanitarian relief programs and these nonprofit owned or financed programs in support of greater humanitarian and development assistance efforts.

The language under the "Tolls" provision in 33 CFR 402.4(a) concerning the toll level reached in 1983 is deleted as it is superfluous.

An editorial correction is being made to the section concerning the description of weight and cargo (33 CFR 402.6) to add the word "hardwood" between the words "sawn" and "lumber" in paragraph (b)(4) of that section to correct an inadvertent discrepancy between the Canadian and American published regulations.

In addition to the elimination of tolls for Government aid cargoes, the Tolls Schedule (33 CFR 402.8) is amended to eliminate the lockage fee for passenger vessels using the Welland Canal. Passenger vessels in the Montreal-Lake Ontario section only pay a per passenger fee. The amendment makes the treatment of passenger vessels using the Welland Canal equal. Relatedly, the provision in the Tolls Schedule concerning vessels in tandem is

amended to clarify that it pertains only to cargo vessels in tandem.

Finally, the present division of tolls revenue between the Authority and the Corporation (33 CFR 402.4(c)) and, in addition to the changes discussed in the foregoing and except the maintenance of the per passenger per lock charge for passenger vessels at \$1.00, the Tolls Schedule for the Welland Canal Section and the Montreal-Lake Ontario Section are revised (33 CFR 402.8). The increase in tolls is approximately 4.5% for 1989 and 4.5% for 1990 on both the Welland Canal and Montreal-Lake Ontario Sections. In addition, the division of tolls is changed from 73% for the Authority and 27% for the Corporation to 75% for the Authority and 25% for the Corporation.

As provided in the 1978 Tolls Agreement between the Authority and the Corporation, the Joint Tolls Review Board has reviewed the estimated expenditures for 1989 and the projected revenues from tolls and other sources to determine the adequacy of the current toll structure and division in meeting the financial requirements of the Authority and the Corporation during fiscal year 1989. In the Montreal-Lake Ontario Section, the cargo forecast used for 1989 was 41.4 million tons. The tonnage projection for Canadian grain, however, is now believed to be less than that projected for 1988. Based upon this 1989 forecast, the present toll structure and division would result in a 4.9 million dollar shortfall to the Authority and a .9 million shortfall to the Corporation, or 18% and 9% respectively. In the Welland Canal Section, the cargo forecast was 44.0 million tons. Based upon this, the Authority is forecasting a \$3.2 million dollar shortfall.

To avoid these shortfalls, the Authority needs an additional 18% in tolls revenue and the Corporation needs an additional 9% on the Montreal-Lake Ontario Section and the Authority needs an additional 9% on the Welland Canal Section. Accordingly, the Authority and the Corporation are proposing the new toll increase and division of tolls described in the foregoing and set forth below.

Two parties commented in response to the December 30, 1988, Notice of Proposed Rulemaking, the American Great Lakes Ports and the International Association of Great Lakes Ports. Their comments were given full consideration in formulating this final rule. Both oppose the increase in tolls generally because it is their position that tolls should be eliminated totally. To eliminate tolls entirely would require changes to the Canadian and United States international agreement and

statutes concerning the joint operation and funding of the Seaway. Accordingly, such a change is not possible through this rulemaking, but the Corporation wishes to ensure those organizations that their position is noted for future consideration. Both organizations commented favorably on the reduction of tolls on lumber shipments and the elimination of tolls for "government aid cargo". The IAGLP asked that we clarify that "government aid cargo" included Canadian as well as United States cargoes meeting the definition. It does. The IALGP also asked if other than government-to-government humanitarian food cargoes would be covered, such as those generated under the United States World Food Program. The new definition would include other than government-to-government generated cargoes such as that because it includes "any food cargo that is owned or financed by a nonprofit organization or cooperative and that is certified by the Customs Service of the United States or Canada as intended for use in humanitarian or development assistance overseas". The continued use of the term "government aid cargo" is simply for brevity and convenience.

Regulatory Evaluation: This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination: The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact: This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways,

PART 402—[AMENDED]

Accordingly, the Saint Lawrence Seaway Development Corporation amends Part 402—Tariff of Tolls (33 CFR Part 402) as follows:

1. The authority citation for 33 CFR Part 402 continues to read as follows:

Authority: 68 Stat. 93-96, 33 U.S.C. 981-990, as amended.

2. Sections 402.3(b)(7), (g), and (j) are revised to read as follows:

§ 402.3 [Amended]

* * * * *

(b) * * *

(7) Lumber, pulpwood, poles and logs, loose or bundled;

* * * * *

(g) "Feed grains" means barley, corn, oats, flaxseed, rapeseed, soybeans, and other field crop seeds grain screenings;

* * * * *

(j) "Government aid cargo" means processed food products which have been donated by or the purchase of which has been financed on concessional terms by the Federal Government of either the United States or Canada for the purposes of nutrition, economic development, emergency, or disaster relief programs and any food cargo that is owned or financed by a nonprofit organization or cooperative and that is certified by the Customs Service of the United States or Canada as intended for use in humanitarian or development assistance overseas.

* * * * *

3. Sections 402.4(a) and (c) are revised to read as follows:

§ 402.4 [Amended]

* * * * *

(a) The tolls shall be set forth in the schedule hereto.

* * * * *

(c) The tolls for the section between Montreal and Lake Ontario shall be paid 75 percent in Canadian dollars and 25 percent in United States dollars. Payments for transit through locks in Canada only shall be in Canadian dollars, and payments for transit through locks in the United States only shall be in United States dollars.

* * * * *

4. Section 402.6(b)(4) is revised to read as follows:

§ 402.6 [Amended]

* * * * *

(b) * * *

(4) 1,000 f.b.m. of sawn hardwood lumber with 15 per cent moisture

content or over shall be deemed to weigh 1,405 kilograms (3,097.49 pounds).

5. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

	Tolls			
	Montreal to or from Lake Ontario		Lake Ontario to or from Lake Erie (Welland Canal)	
	1989	1990	1989	1990
(a) For transit of the Seaway, a composite toll, comprising:				
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States).....	0.09	0.09	0.11	0.11
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows:				
—Bulk cargo.....	0.89	0.93	0.44	0.46
—General cargo.....	2.15	2.25	0.71	0.74
—Containerized cargo.....	0.89	0.93	0.44	0.46
—Government aid cargo.....	0.00	0.00	0.00	0.00
—Food grains.....	0.54	0.57	0.44	0.46
—Feed grains.....	0.54	0.57	0.44	0.46
(3) A charge in dollars per passenger per lock.....	1.00	1.00	1.00	1.00
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo vessels, which may be shared by cargo vessels in tandem:				
(i) Loaded: Per Lock.....	NA	NA	355.00	370.00
(ii) In ballast: Per Lock.....	NA	NA	260.00	275.00
(b) For partial transit of the Seaway:				

	Tolls			
	Montreal to or from Lake Ontario		Lake Ontario to or from Lake Erie (Welland Canal)	
	1989	1990	1989	1990
(1) Between Montreal and Lake Ontario, in either direction 15 percent per lock of the applicable toll.....				
(2) Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll.....				
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:				
—Pleasure craft.....	7.00	7.00	7.00	7.00
—Other vessels.....	13.00	13.00	13.00	13.00

Issued at Washington, DC, on September 18, 1989.

Saint Lawrence Seaway Development Corporation.

James L. Emery,
Administrator.

[FR Doc. 89-22586 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-61-M

Maritime Administration

46 CFR Part 252

[Docket R-121]

RIN 2133-AA66

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services; Exclusion of Cargoes Reserved for U.S.-Flag Carriers

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is adding provisions to regulations governing eligibility of operators of United States-flag bulk cargo vessels engaged in worldwide service for the payment of operating-differential subsidy (ODS). This final rule expresses MARAD policy of paying ODS for bulk cargo vessel operations only when, as required by statute, it is necessary to meet foreign-flag competition, to promote U.S. foreign commerce and to increase the carriage by U.S.-flag vessels of bulk cargoes.

EFFECTIVE DATE: October 25, 1989.

FOR FURTHER INFORMATION CONTACT:

Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, DOT, 400 7th Street, SW., Washington, DC 20590. Tel. (202) 366-2400.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Title VI of the Merchant Marine Act, 1936, as amended, (Act), (46 App. U.S.C. 1171-1185) MARAD, under authority delegated by the Secretary of Transportation, administers the ODS program. ODS agreements (ODSAs), to which MARAD is a party, provide for the payment of ODS to the operators of eligible U.S.-flag cargo vessels that are operating in an "essential service in the foreign commerce of the United States." Payment of ODS is intended to help make the cost of operating U.S.-flag vessels comparable to that of operating similar vessels under the registry of a foreign country, which vessels are substantial competitors of the subsidized U.S.-flag vessels (46 App. U.S.C. 1173(b)).

Background—Legislative History

In 1970, Congress enacted amendments to the Act that extended authorization to pay ODS for the carriage of cargo on bulk cargo vessels (vessels that are chartered or operated for one or more voyages over a period of time to carry large shipments under contract, and that are not operated on any particular service, route or line). Prior to 1970, authorization to pay ODS was restricted to liner vessels (common carriers that travel on regular schedules along designated trade routes).

The legislative history of the 1970 amendments indicates that Congress contemplated that cargoes that are reserved to U.S.-flag vessels by the cargo preference laws of the United States (including, but not limited to, 10 U.S.C. 2361 and 46 App. U.S.C. 1241), when carried by bulk vessels, would eventually be carried, if on a subsidized basis, at "world rates."¹ World rates are set by competitive factors (e.g., supply and demand) in the world market, in contrast to the sometimes higher, "fair and reasonable rates" (or "premium rates") that are paid to U.S.-flag vessels carrying reserved preference cargoes.

However, Congress also intended that the Secretary of Transportation consider the criteria under sections 601 and 605(c) of the Act (46 App. U.S.C. 1171 and

¹ H.R. Rep. No. 1073, 91st Cong., 2nd Sess., at p. 38 (1970).

1175(c)) in connection with any subsidy award to bulk ship operators.² Thus, before executing an ODS agreement for one or more bulk vessels, it is necessary that the Secretary determine, *inter alia*, that: (1) The operation of additional vessels with ODS would carry out the purposes and policy of the Act; (2) the operation of such vessel or vessels is required to meet foreign-flag competition and promote the foreign commerce of the United States; and (3) U.S.-flag service in the bulk trades is inadequate.

Prior MARAD Policy

The initial bulk ship applicants voluntarily excluded the carriage of preference cargoes from their intended service. As a result, the ODS contracts entered into with bulk applicants specified that "said vessels shall carry exclusively commercial liquid and dry bulk cargoes not subject to the cargo preference statutes of the United States * * *".

In 1973, MARAD promulgated a regulation (46 CFR part 294) establishing a program for subsidizing the carriage of raw and processed agricultural commodities from the United States to the Union of Soviet Socialist Republics (USSR). Pursuant to a bilateral agreement, one-third of such cargoes was reserved for U.S.-flag vessels, but only if they could carry the cargo at a specified charter rate. Under 46 CFR part 294, MARAD entered into short-term ODSAs which provided subsidy for such carriage, on a voyage-to-voyage basis, subject to a finding that service provided by U.S.-flag vessels in that trade was inadequate and that payment of such ODS furthered the purposes and policy of the Act. The subsidy payable by MARAD was subject to abatement, calculated by a formula, if the charter rate exceeded a specified level. It was intended to further the foreign and trade policies of the United States, evidenced by maritime agreements that have been in effect between the United States and the USSR at various times.

In 1976, ODSAs for bulk vessels that were not engaged in the grain trade with the USSR were amended to provide that the vessels could carry non-reserved portions of preference cargoes at world rates with subsidy, but could not carry any portion of cargo reserved to U.S.-flag vessels.

In 1977, ODSAs for tankers were amended to allow the vessels to carry liquid bulk preference cargoes to meet the requirements of the Strategic Petroleum Reserve (SPR) Program. The

amendments specified that MARAD would not pay ODS for the carriage of that portion of SPR cargo reserved for U.S.-flag ships—again consistent with MARAD's general policy.

Also in 1977, an affiliated group of bulk operators applied for amendments to their existing ODSAs to allow the carriage of dry bulk statutory preference cargo with ODS. The carriage of preference cargo was to be at world rates. Following administrative proceedings, and judicial review, the Maritime Subsidy Board (Board) issued a Final Opinion and Order in Docket No. A-132, 22 SRR 599 (M.S.B. 1983), which confirmed admission of the subject vessels into the preference trades with ODS. (See, *Atlas Marine Co.*, Docket Nos. S-605, S-607, S-614, 18 SRR 987 (M.S.B. 1978); *Aeron Marine Shipping Co.*, Docket No. A-132, 19 SRR 111 (M.S.B. 1979); *Aeron Marine Shipping Co.*, Docket No. A-132, 19 SRR 491 (M.S.B. 1979). Also see *Aeron Marine Shipping Co. v. United States*, 525 F. Supp. 527 (D. D.C. 1981); and *Aeron Marine Shipping Co., et al. v. United States*, 695 F. 2d 567 (D.C. Cir. 1982). The Board found that U.S.-flag service in the bulk preference trades, including that of the applicants' bulk vessels, was and would continue to be inadequate, and that operation of the additional vessels in these trades would further the purposes and policy of the Act, within the meaning of section 605(c) of the Act.

The finding of inadequacy of U.S.-flag service was based on the standard that there be a bare minimum of 50 percent U.S.-flag participation in the preference trade. The relevant pool of cargo used to determine that percentage was the bulk cargo that would move in the preference trades, not that which would move worldwide. The Board determined that the bulk preference trades may be treated as a separate market for applicants under section 605(c) of the Act.

The Board, in making the necessary findings under section 601(a) of the Act that ODS for the vessel(s) in Docket A-132 was "required to meet foreign-flag competition * * *," determined that section 601 does not require operations exclusively meeting foreign-flag competition, but only substantially meeting foreign-flag competition. It was not proposed that the vessels operate exclusively in preference trade, but that such trade be available to the vessels only in addition to the normal commercial trade. The applicants limited their proposed carriage of preference cargo to no more than one-half of vessel operating revenue, on an annual basis, and on the same

conditions as are applicable to subsidized liner vessels under 46 CFR 280.4, provided the rates were "fair and reasonable" for U.S.-flag commercial vessels. Under 46 CFR 280.4, a reduction in ODS is effected for carriage of preference cargoes in excess of 50 percent, by gross freight revenue, on an annual basis.

As a result of judicial and administrative proceedings involving Docket A-132, MARAD entered into contract amendments with the applicants allowing them to carry cargo subject to the cargo preference laws of the United States at fair and reasonable rates for privately owned subsidized U.S.-flag commercial vessels, subject to subsidy abatement identical to that applicable to liner vessels, as prescribed in 46 CFR 280.4. These amendments were superseded by amendments similar in nature, but which included an "augmented bid" procedure to be used by Government agencies when evaluating bids from subsidized and unsubsidized bulk carriers. The augmented bid procedure was formalized by regulation effective October 11, 1984 (46 CFR 381.8).

On February 28, 1986, the Board authorized amendments to the contracts of subsidized bulk operators to allow their vessels to transport dry bulk preference cargo at fair and reasonable rates, without ODS and subject to certain conditions. (Docket No. S-764.) Presently, no U.S.-flag bulk operator has a contract allowing carriage of premium-rated reserved preference cargoes with ODS.

Policy Clarification and Extension

A shift in the form of U.S. foreign aid to certain countries that affects the use of U.S.-flag bulk vessels has occasioned a need to reexamine and clarify MARAD's policy regarding payment of ODS for the carriage of cargoes reserved to U.S.-flag vessels. Foreign assistance to some countries, previously provided under the Commodity Import Program (CIP), has shifted to nonreimbursable cash grants (cash transfer program). The cargoes that move under the CIP (as well as other foreign assistance programs) are clearly covered by the cargo preference statutes. MARAD has consistently prohibited subsidized bulk carriers from carrying these cargoes with subsidy, or has allowed carriage subject to either an augmented bid procedure or a subsidy abatement formula.

The court decision in *Council of American-Flag Ship Operators v. U.S.*, 596 F. Supp. 160 (D. D.C. 1984), *affd.* 782 F. 2d 278 (D.C. Cir., 1986), involved the

² *Id.* at p. 42, S. Rep. No. 1080, 91st Cong., 2nd Sess., at p. 38 (1970).

question of whether cargoes shipped from the United States to a country that is the recipient of funds received under the cash transfer program are subject to the Cargo Preference Act (46 App. U.S.C. 1241). If answered in the affirmative, such cargoes would be subject to the requirement that at least 50 percent of the gross tonnage be carried on U.S.-flag commercial vessels. The court held that the Cargo Preference Act does not apply to the cash transfer program because that program, unlike the CIP, provides for unrestricted cash transfers not tied to any obligation to make purchases in the United States.

This decision notwithstanding, the principal recipient of cash transfers under this program (Israel) voluntarily entered into a commitment to continue to follow procedures which had been followed under the CIP and to ship "a fair share" of its imports of U.S. grain on U.S.-flag dry bulk carriers, at fair and reasonable rates. Because U.S. costs exceed foreign costs, the fair and reasonable rate for shipment of such cargoes has historically exceeded the world rate, and the cargo has moved at a "premium" rate.

Foreign assistance in the nature of cash transfers was not known at the time MARAD entered into the long-term subsidy contracts with U.S. bulk operators, nor did this type of reservation scheme then exist. Had it existed, such cargoes would have been treated identically with statutory preference cargoes. The carriage of any bulk cargoes strictly reserved to U.S.-flag bulk operators must be considered as being in addition to the operator's existing subsidized service for competitive worldwide carriage of bulk commercial cargoes. For example, the Soviet grain subsidy program was not an adjunct of commercial carriage, but required separate consideration, just as separate consideration was required in Docket A-132. Any approval of ODS for such additional service must be conditioned, as discussed above, on a finding that U.S.-flag service in the bulk preference trades is inadequate, that the operation of additional vessels with ODS would further the accomplishment of the purposes and policy of the Act, and that the operation of such vessel(s) is required to meet foreign-flag competition and to promote the foreign commerce of the United States.

Absent these findings, on a current basis, MARAD believes that it is prohibited by statute from paying ODS for the carriage of bulk cargoes which are reserved exclusively to U.S.-flag vessels, whether by statute or by voluntary agreement of a country that

receives financial assistance from the U.S. Government in the form of unrestricted cash transfers. For the purposes of Sections 601 and 605 of the Act, there is no substantive distinction between these cargoes and preference cargoes. Since both types of reserved cargoes will move on U.S.-flag bulk vessels, irrespective of subsidy, the award of subsidy would, absent special circumstances, not further the purposes and policy of the Act.

NPRM

On September 26, 1988, MARAD published a notice of proposed rulemaking (NPRM) for the purpose of clarifying its existing policy concerning the conditions for awarding ODS to the operators of bulk vessels (53 FR 37536). The NPRM invited comments on proposed new section 252.23 and specifically asked that commenters address two related issues. First, should U.S.-flag vessels carrying this type of reserved cargo on a part-time basis, and otherwise carrying competitive commercial cargo that provides substantial portions of their total annual freight revenue, be considered substantially meeting foreign competition? If so, should payment of ODS for such operation be subject to a reduction formula that is similar to that in 46 CFR 280.4?

Comments and Responses

MARAD received comments from three interested persons: two bulk vessel operators and the Government of Israel (Israel). One operator, which opposes this rulemaking, has contracted with Israel for the carriage of grain cargoes. The second operator, which supports the rule, is a competitor for the carriage of these grain cargoes.

MARAD has carefully reviewed these comments. Each significant comment is summarized below, with a MARAD response to each.

Comments Supporting the Rulemaking

The operator which supports this rulemaking operates five bulk vessels that are eligible for and routinely compete for the carriage of cargoes that are reserved to U.S.-flag bulk merchant vessels.

Comment: The proposed rule is consistent with the Merchant Marine Act, 1936, since section 601(a) of the Act states that no application for ODS shall be approved unless "the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition." Cargoes reserved to U.S.-flag vessels by an agreement between the U.S. Government and another government are not subject to

competition by foreign-flag vessels. All of the available facts and circumstances concerning the "Side Letters" executed by Israel are consistent with the conclusion that the bulk grain cargoes that have been shipped to Israel on U.S.-flag vessels since 1978, representing about 50 percent of Israel's annual requirements for the shipment of grain that it has financed with cash transfer program assistance, were reserved for U.S.-flag vessels pursuant to the provision of those Side Letters.

Response: MARAD agrees. Each year, Israel reports on its "experience under the Cash Transfer Program" for the previous year at the same time that it signs a new Side Letter commitment. These representations are distributed to interested U.S. Government agencies by AID for review and comment prior to AID's signing the New Year's cash transfer (grant) agreement and disbursing funds to Israel. These reports from Israel consistently show that the market share of U.S.-built carriers in the transport of U.S. grain exports to Israel meets "the desired mark of 50%."

Comment: The Side Letters that were issued have been and will continue to be legally binding on Israel, which has continually shown an intent to be bound by them. Since it may be argued that these Side Letters are not binding as international agreements because they are unilateral, it is suggested by this commenter that the final regulations should state that an "agreement" encompasses any understanding or unilateral commitment which has the effect of reserving cargoes to U.S.-flag vessels.

Response: MARAD does not go so far as to maintain that the Side Letters are "legally binding." It is clear, however, that they express a commitment on the part of Israel, which Israel has shown an intent to uphold, which has the effect of reserving cargoes for U.S.-flag vessels. MARAD agrees with the change suggested and it is incorporated in the final rule.

Comment: U.S.-flag vessels should be considered as substantially meeting foreign competition so long as they derive substantial portions of their annual revenue from carrying commercial cargo, a policy requirement set forth by the Board in Docket A-132. That requirement is satisfied if a U.S.-flag vessel derives substantial revenue from carrying cargoes for which it must compete with foreign-flag vessels. In Docket A-132, the Board allowed subsidized vessels to carry preference cargo, after balancing two competing Congressional objectives; that of encouraging carriage of preference

cargoes on subsidized vessels, and that of supporting the participation of U.S.-flag vessels in the commercial (nonpreference) trade. That compromise is just as germane to cargoes that are reserved to U.S.-flag vessels pursuant to agreement or understanding.

Response: MARAD agrees.

Comment: While vessels eligible to receive ODS should be allowed to carry preference cargoes, ODS should not be payable for the carriage of cargoes reserved to U.S.-flag vessels. Rather, this commenter favors the payment of fair and reasonable rates for preference cargoes, whether the vessel is eligible for ODS or not. Israel has entered into an understanding that it would pay fair and reasonable rates for U.S.-flag vessels, not a reduced rate made possible by ODS payments to the bulk operator that could be passed on. Payment of subsidy to the bulk operator would allow Israel to avoid its obligations to pay fair and reasonable rates and to obtain rates equivalent to the lower rates of lower cost foreign-flag vessels. Before vessels carrying reserved cargoes may become eligible for ODS, they must comply with the provisions of section 605(c) of the Act, and establish that "the service already provided by vessels of United States registry is inadequate," as was done in Docket A-132 with respect to certain vessels carrying preference cargoes. Should the vessel operator establish this inadequacy, MARAD should make the bid augmentation rule at 46 CFR 381.8 applicable to the carriage of these reserved cargoes, as its underlying rationale is no less applicable to cargoes reserved to U.S.-flag vessels other than by the cargo preference statutes.

Response: MARAD has determined that the subsidy reduction formula rule used for liner vessels at 46 CFR 280.4 is not appropriate in this situation. MARAD likewise believes that the bid augmentation rule at 46 CFR 381.8 would be inappropriate. When carrying reserved cargoes, U.S.-flag bulk vessels will not be eligible for ODS. When carrying commercial cargoes subject to foreign-flag competition, they will be fully eligible.

Opposition to Rulemaking

Comments by the Government of Israel

Comment: Israel states that "The Side Letter is not a commitment to follow the cargo preference procedures of the Commodity Import Program ("CIP"). It is only a commitment to carry a certain portion of grain cargoes on U.S. flag carriers at fair and reasonable rates." (emphasis added), and that "The procedures referred to in Israel's Side

Letter relate only to vessel tendering and fixturing procedures, not to Cargo Preference Act procedures or requirements."

Response: The CASO decision that the Cargo Preference Act does not apply to the cash transfer program notwithstanding, it is precisely because of Israel's "commitment to carry a certain portion of grain cargoes on U.S. flag carriers at fair and reasonable rates" that MARAD believes it is prohibited by statute from paying ODS for carriage of those cargoes—there is no foreign competition for them.

Comment: Israel further notes that:

The proposed rule also states that the cargoes currently being transported under the Consecutive Voyage Charter Agreement signed by the Government of Israel on July 30, 1987 are cargoes "under the Cash Transfer Program." This statement is incorrect. There are no cash transfer funds involved in the purchase of transportation of grain cargoes being carried to Israel.

Response: This particular Charter Agreement provides a good example of the type of voyages for which operators would not be eligible to receive ODS under this rulemaking.

Although in most cases it may be difficult to determine whether cargoes are purchased with cash transfer funds provided by the U.S. Government, counsel for Israel at the time they negotiated the Charter Agreement stated in letters to MARAD that "cash transfer assistance will be utilized to purchase the grain which will be transported pursuant to the proposed charter" * * * "During the period of the charter, the ULTRASEA will be carrying grain cargoes purchased by the Government of Israel with cash transfer funds," and "charter the ULTRASEA to transport cargo purchased with cash transfer funds." (Emphasis added).

While MARAD would normally be expected to place reasonable reliance on expressions of fact submitted by counsel for parties seeking various necessary approvals, in the case here cited by Israel that was not necessary. Paragraph 11 of the Charter Agreement provides:

"11. Termination of U.S. flag requirement. Charterers [Israel] shall have the option of cancelling the unexpired portion of this Charter without payment of any termination fee if:

(a) Charterers shall not be required to ship Cash Transfer Program cargoes on U.S. flag vessels; or

(b) Charterers cease to receive Cash Transfer Program cargoes requiring shipment on U.S. flag vessels."

(emphasis added)

This, MARAD believes, is a clear indication that Israel (as even more

clearly stated in their comments quoted above) intended that the Side Letters would require carriage of cargoes on U.S.-flag vessels, that they do in fact allocate certain cargoes for exclusive U.S.-flag carriage, and that the cargoes to be carried under the Charter Agreement were intended by Israel to be included in that allocation. The source of funds utilized for the purchase of the cargoes or the payment of ocean freight becomes irrelevant—there is no foreign-flag competition for those cargoes.

Comments by Operator Opposed

The operator which opposes this rulemaking operates two bulk vessels that are eligible for cargoes that are reserved to U.S.-flag vessels, and currently has one of the vessels under long-term consecutive voyage charter to Israel for the carriage of grain cargoes.

Comment. MARAD cannot, by policy pronouncement in a rulemaking action, alter its obligation to pay subsidy under an ODSA which the commenter alleges obligates MARAD to pay ODS for the carriage of grain cargoes to Israel that are "commercial cargoes not subject to the cargo preference statutes of the United States" * * *. The single exclusion of statutory preference cargoes from the ODSA, as well as the history of that ODSA, shows that the subject of cargo exclusion was resolved within that single exclusion, with no intent that there be future exclusions. MARAD cannot, by rulemaking or other action, reinterpret contract provisions to exclude subsidy for the carriage of individual cargoes. As the operator under an ODSA, the commenter had no reason to believe that the carriage of commercial cargoes not subject to U.S. cargo preference laws could ever be excluded from ODS eligibility. When an ODS contractor expends large amounts of money on the construction and operation of a vessel, in reliance upon a statutory and contractual scheme which it reasonably expects to continue, neither statute or regulation may change that scheme to the substantial detriment of the contractor.

Response: The thrust of the commenter's argument is that since the only specific exclusion of cargoes under the ODSA was statutory preference cargoes, and a court decided thirteen years later that cash transfer program cargoes are not statutory preference cargoes, all other cargoes may be carried and are entitled to ODS, without any further consideration by the Board. The legislative history of the Act demonstrates clearly that foreign competition for cargo is a prerequisite

for the grant of subsidy. Foreign assistance in the nature of cash transfers was unknown at the time MARAD entered into long-term ODSAs with bulk operators. Also nonexistent was any type of an agreement to which the United States was a party under which a foreign country was obligated to reserve cargoes purchased from United States sources for carriage by U.S.-flag vessels. Had this arrangement existed, or had it been contemplated or foreseeable, it is reasonable to assume that the subject would have been considered under sections 601 and 605(c) of the Act and addressed in the ODSAs, and that such reserved cargoes would have been treated in the same way as preference cargoes, i.e., operators receiving ODS would have been excluded from participation in the carriage of these cargoes. Carriage of these reserved cargoes must be considered as being in addition to existing subsidized services for competitive worldwide carriage of bulk commercial cargoes. Any approval of ODS for such additional service is dependent on a finding by the Board that subsidized operation is required to meet foreign-flag competition. The cargoes at issue were always reserved for U.S.-flag vessels by the Side Letters, to be carried at premium rates. There was never a possibility of foreign-flag competition, which is a condition precedent to granting subsidy. Although the Side Letters do not mention a specific share of cargo that is being reserved, Israel has consistently reserved 50 percent of the trade for U.S. carriage since 1978, treating it in the same manner as CIP cargoes that had been shipped in prior years. This commenter had no reasonable basis to assume that subsidy would be paid for the carriage of any cargo that is exclusively reserved for U.S.-flag vessels, since there was no precedent for such action.

This commenter certainly had not expended large amounts of money to construct and operate a vessel in reliance on subsidy being paid for reserved cargoes. In fact, before requesting MARAD approval, the operator entered into a Consecutive Voyage Charter Agreement with Israel providing that the charter is subject to MARAD approval of ODS for both the initial 3-year term, and, if extended, the additional two years of the charter. This operator obviously recognized that MARAD had discretion to award subsidy for an additional service not contemplated by the ODSA. It was also certainly aware of the fact that no bulk operator had applied for subsidy with

respect to cash transfer program cargoes in the nine years since the first Side Letter was executed.

Comment: Israel's Side Letters do not vest MARAD with the authority to amend this operator's ODSA because the Side Letters mention neither the reservation of any cargo for U.S.-flag vessels nor a figure of 50 percent cargo share. Rather, it claims that Israel's expression of an intent to follow procedures with a view "toward assuring a fair share of the market for American Carriers" is not a commitment to reserve 50 percent of bulk cargoes for U.S.-flag vessels.

Response: The first Side Letter, executed in 1978, provided, in pertinent part, that "(r)egarding the carriage of goods imported from the United States, * * * [Israel] will continue to follow present procedures for bulk shipments of grain on dry bulk carrier." (emphasis added)

Subsequent Side Letters, which have been executed annually for subsequent fiscal years, have reiterated that commitment. Each renewal of the original Side Letter specifically states that Israel "would like to take this opportunity to renew the aforementioned commitments" for the upcoming fiscal year. Each Side Letter provides that it shall be effective for a definite period of time, a clear indication of an intent that the letters are in fact binding. Each year Israel has provided a report containing a review of its compliance with the Side Letter for the previous year. The "present procedures" adopted by Israel pursuant to the Side Letters are substantially similar to the procedure used with respect to preference cargoes. By agreeing to follow what are essentially cargo preference procedures, Israel, in effect, agreed that grain cargo shipped to Israel will be treated like preference cargoes. The conduct of Israel supports only one conclusion, namely, that Israel was committed to using U.S.-flag ships to carry 50 percent of cargoes that were purchased in accordance with the Side Letter Agreement, and to the extent that U.S.-flag vessels were available, has done so every year since it executed the first Side Letter in 1978. Those cargoes were reserved for U.S.-flag vessels and could have been shipped only on U.S.-flag vessels.

Comment: There is no statutory support for creating a category of cargo called "reserved" cargo.

Congress has recognized only two categories of cargo, commercial and preference. That which is not preference is commercial and may be subsidized. The Congress has been aware of the

Side Letters since 1978 and of the CASO decision that was finalized in 1986, but has not seen fit to enact legislation consistent with MARAD's present position, although it has enacted numerous amendments to the Act, including amendments affecting the ODS program.

Response: ODS has not been paid to any operator for the carriage of any of these reserved cargoes since the initiation of the procedures pursuant to the first Side Agreement in 1978. The first and only request occurred in late 1987, and is the subject of litigation between this operator and the United States. MARAD believes that its position on this issue is totally consistent with Congressional intent and prior MARAD administrative actions.

Comment: The examples of prior policy set forth in the NPRM disprove MARAD's position. MARAD reliance on its prior policy concerning the subsidized carriage of grain to the USSR is misplaced since MARAD treated those cargoes as commercial, despite the fact that they were reserved for U.S.-flag vessels, and paid ODS for their carriage. The 1976 ODSA amendments allowing bulk vessels to carry non-reserved portions of preference cargoes with subsidy, and the 1977 amendments for tankers allowing SPR cargoes to be carried proves that the ODSAs obligate MARAD to pay ODS for any cargo, even preference cargo, so long as it is not required by statute to move on U.S.-flag vessels. Israeli grain cargoes are not required by statute to move on U.S.-flag vessels. Docket A-132 involved application for ODS for the carriage of preference cargoes that were reserved by statute for U.S.-flag vessels, again consistent with the argument that these are the only cargoes excluded by contract from eligibility for ODS. The last action cited by MARAD of February 28, 1986, is not relevant because it relates to the carriage of cargoes without ODS.

Response: The Regulation governing subsidy calculation for the Russian grain program clearly contemplated foreign-flag competition in that trade:

Foreign flag competition. For purposes of establishing such sums as the Board determines are necessary to make the cost of operating U.S.-flag vessels competitive with the cost of operating similar vessels under the registry of a foreign country, the Board shall select a typical foreign-flag vessel which has actually participated in the carriage of export bulk raw and processed agricultural commodities from the U.S. to the USSR. . . .

(46 CFR 294.3(b)) (emphasis added)

Under the Russian grain regulation, MARAD entered into short-term ODSAs rather than the usual 20-year ODSA, which provided subsidy for such carriage, subject to a finding that service provided by U.S.-flag vessels in that trade was inadequate and that payment of such ODS furthered the purposes and policy of the Act. The subsidy payable by MARAD was subject to abatement, calculated by a formula, if the charter rate exceeded a specified level.

Here, on the other hand, there is no foreign competition for cargoes reserved by the Israeli Side Letters for U.S.-flag ships, so that carriage of such cargoes is not subsidizable. The Russian grain program is readily distinguishable from the present case.

The other examples of prior MARAD policy and practice, rather than supporting this commenter's contention that only preference cargo required by statute to move on U.S.-flag vessels were excluded from subsidy under the ODSAs, are consistent with MARAD's policy that subsidy for any new or additional service requires current findings under sections 601 and 605(c) of the Act.

Comment: Even if new findings of foreign-flag competition were required for each voyage under an ODSA, the carriage of these grain cargoes to Israel meets foreign-flag competition. Israel has stated that it would not have entered into a long-term charter of the commenter's vessel absent ODS being paid for that vessel, and that these cargoes would have moved on foreign-flag vessels.

Response: MARAD accepts the statement of Israel. The fact remains, however, that the charter it refers to clearly contemplates, as discussed earlier, the carriage of cargoes reserved to U.S.-flag vessels, which carriage would be reported by Israel against its commitment. There was no foreign competition for the charter.

Comment: MARAD is misapplying its own precedents. The agency has found previously that foreign-flag competition is present if the subsidized vessel competes for commercial backhaul cargo. Furthermore, if a vessel's charter rate is directly affected by foreign-flag rates, that vessel is meeting foreign-flag competition. This is precisely what is happening in the carriage of Israeli grain cargo, since a critical consideration in Israel's decision to charter this operator's vessel was whether the charter rates were tending toward world rates.

Response: The first statement is misleading. In the case cited, the vessel would have received ODS, but both outbound (preference) and inbound

(non-preference) cargoes were required to be carried at "world rates" and the ships " * * * would continue to operate substantially in the U.S. foreign commerce exclusive of the bulk preference trade because of past operations and the opportunity for backhaul movements." Under the terms of this commenter's charter, the cargoes are being carried at a rate approximately 25 percent above world rates, and the vessel may only carry backhaul cargoes with the approval of Israel. This type of operation is clearly distinguishable from the case cited by the commenter. There is no basis for the allegation that the commenter's charter rate was "directly affected by foreign-flag rates."

Comment: If MARAD amends ODSAs to allow subsidy for vessels that carry this type of reserved cargo on a part-time basis, and otherwise carry competitive commercial cargo that provides substantial portions of the vessels' total annual freight revenue, so as to be considered as substantially meeting foreign competition, ODS payments should not be subject to a reduction formula. Since grain cargoes moving to Israel are "commercial" cargoes (not statutory preference cargoes), a subsidy abatement is totally inappropriate. Abatement will undermine the very purpose of the Merchant Marine Act of 1970—to increase U.S.-flag carriage of bulk cargoes in U.S. foreign commerce. Israeli grain cargoes are not the equivalent of statutorily reserved preference cargoes because they are purchased in purely commercial transactions by private Israeli companies using private funds. Even if the grain cargoes being carried to Israel were the equivalent of preference cargoes, MARAD has made it clear in a 1979 Board action that subsidy abatement is not necessary for the carriage of preference cargoes.

Response: MARAD has not proposed to amend ODSAs. As previously discussed, MARAD believes that statutory constraints of sections 601 and 605(c) of the Act control the award of ODS.

Section 601 of the Act, provides that no application for ODS shall be considered unless the Secretary determines—

" * * * that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States * * * [and] (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act * * *

(46 App. U.S.C. 1171(a))

This requirement is a discrete step in the approval process of an application for subsidy, and its outcome is reflected in the service description of each contract. It is generally satisfied when the contract is approved and would not normally be brought into consideration unless an application for additional (or new) service was being considered. Article 1-2(a) of the typical bulk vessel ODSA, the service description, appears to define, by explanation, "commercial" cargoes as being "cargoes not subject to the cargo preference statutes." MARAD believes, however, that the reference to the cargo preference statute is not a strict delimitation of cargoes that are not "commercial," but rather a shorthand way to categorize such cargoes as known at the time. The commenter's ODSA, MA/MSB-129, was entered into on June 30, 1971. Foreign aid in the form of cash transfers was not known (or rarely utilized) at the time.

MARAD believes the intent of the Congress in enacting section 601 can only be properly implemented by limiting the award of ODS to those vessels engaged in operations in which they are substantially meeting foreign competition. As MARAD is unable to make such a finding in this instance, it has determined that a subsidy reduction formula such as that in 46 CFR 280.4 is inappropriate. On voyages on which they carry these reserved cargoes, U.S.-flag bulk vessels will simply not be eligible for ODS. While carrying commercial cargoes subject to foreign competition, they will receive full ODS.

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant because of its considerable public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this

amendment will not have a significant economic impact on a substantial number of small entities.

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

The amendment to the regulations at 46 CFR part 252 contains no new information collection requirements that require approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

List of Subjects in 46 CFR Part 252

Grant programs—Transportation, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, MARAD is issuing, as a final rule, amendments to amend 46 CFR part 252, as follows:

PART 252—[AMENDED]

1. Revise the authority citation to read as follows:

Authority: Secs. 204(b), 207, 211, 601, 602, 603 and 605, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1117, 1121, 1171, 1172, 1173 and 1175); 49 CFR 1.66.

2. Add a new § 252.24 to subpart C to read as follows:

§ 252.24 Continued eligibility for subsidy.

Operators shall remain eligible for ODS so long as they are engaged in service which would, under this part and sections 601(a), 602, and 605(c) of the Act, qualify for approval of an ODSA. The payment of ODS will be made only for carriage of commercial cargoes for which U.S.-flag vessels are in direct competition with foreign-flag vessels. An example of cargo that is excluded is bulk cargo reported by a shipper as the U.S.-flag share of cargoes subject to an agreement (including a unilateral commitment by a foreign government which has the effect of reserving cargoes for U.S.-flag vessels), between the United States and a foreign government in connection with any U.S. cash transfer foreign assistance program. In such a circumstance, there is no foreign-flag competition for such cargoes.

By order of the Maritime Administrator.

Dated: September 19, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-22470 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket No. 88-161]

Practice and Procedure; Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification of effective date.

SUMMARY: This document clarifies the effective date for the final rules which amended Parts 1 and 22 of the Commission's Rules relating to the filing of applications in the Mobile Services Division on microfiche.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra Donnell, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: The public is reminded that the rules in the *Report and Order*, CC Docket 88-161, released on November 16, 1988, published at 53 FR 48909 (December 5, 1988), as amended by the *Memorandum Opinion and Order*, released July 20, 1989, and published at 54 FR 31031 (July 26, 1989), are effective September 25, 1989.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 22

Communications common carriers, public mobile service.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 89-22589 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-32; RM-6454]

Radio Broadcasting Services; Fort Smith and Clarksville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C2 for Channel 265A at Fort Smith, Arkansas, and modifies the Class A license of Station KBBQ-FM, accordingly, in response to a petition filed on behalf of George T. Hernreich. Additionally, Channel 295A is substituted for Channel 263A at Clarksville, Arkansas, for which an application is pending, to accommodate the modification of Station KBBQ-FM. See 54 Fed. Reg. 8219, February 27, 1989. Coordinates used for Channel 264C2 at Fort Smith are 35-13-26 and 94-21-30; those for Channel 295A at Clarksville are 35-28-34 and 93-21-41. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 6, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-32, adopted August 28, 1989, and released September 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas, for Clarksville, by removing Channel 263A and adding Channel 295A, and for Fort Smith, by removing Channel 265A and adding Channel 264C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22590 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-607; RM-6488]

Radio Broadcasting Services; Ashtabula, OH**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: The Commission, at the request of Rod A. Callahan, allots Channel 252A to Ashtabula, Ohio, as the community's second local FM service. Channel 252A can be allotted to Ashtabula in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 kilometers (3.7 miles) northeast to avoid a short-spacing to Station WNCX, Channel 253B, Cleveland, Ohio. The coordinates for this allotment are North Latitude 41-54-27 and West Longitude 80-43-52. Canadian concurrence has been received since Ashtabula is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 6, 1989. The window period for filing applications will open on November 7, 1989, and close on December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-607, adopted August 22, 1989, and released September 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended for Ashtabula, Ohio, by adding Channel 252A.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-22591 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-26; RM-6518]

Radio Broadcasting Services; Sisters, OR**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: The Commission, at the request of Schuyler H. Martin, allots Channel 281A to Sisters, Oregon, as the community's first local FM service. Channel 281A can be allotted to Sisters in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-17-30 and West Longitude 121-33-06. With this action, this proceeding is terminated.

DATES: Effective November 6, 1989. The window period for filing applications will open on November 7, 1989, and close on December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-26, adopted August 22, 1989, and released September 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, Sisters, Oregon, Channel 281A.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-22592 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. 88-24; Notice 02]

RIN 2127-AC06

Federal Motor Vehicle Safety Standards; Head Restraints**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.**ACTION:** Final rule.

SUMMARY: This final rule extends the applicability of Standard No. 202, *Head Restraints*, to trucks, multipurpose passenger vehicles (MPV's) and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. National estimates of accident data for 1982-85 indicate that approximately 17,800 whiplash injuries occurred annually to front seat occupants 15 years and older in light trucks and vans involved in rear impacts. 4.6 percent of all occupants in light trucks in reported rear impacts suffered whiplash injuries and 34.4 percent of those injured in rear impacts suffered whiplash injuries. Limiting the rearward motion of an occupant's head in a rear impact crash by a head restraint should help reduce those injuries since research has demonstrated the effectiveness of Standard No. 202 in reducing whiplash injuries.

DATES: The effective date of changing the Code of Federal Regulations to reflect the amendments in this notice is November 9, 1989. Petitions for reconsideration must be received by October 25, 1989. The expanded application of the standard takes effect September 1, 1991. Each truck, bus and multipurpose passenger vehicle that is manufactured on or after that date, and has a gross vehicle weight rating of 10,000 pounds or less, must comply with the requirements of the standard.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration,

400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Jettner, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. Telephone: (202) 366-4917.

SUPPLEMENTARY INFORMATION: On December 13, 1988 (53 FR 50047), the agency proposed extending the applicability of Standard No. 202, *Head Restraints*, to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of 10,000 pounds or less. (This notice will occasionally use the term "light trucks and vans" to refer to trucks, MPV's and buses with a GVWR of 10,000 pounds or less.) The agency's proposal responded to a petition for rulemaking from Mr. Dale T. Fanzo requesting that NHTSA require head restraints "on vehicles other than passenger cars," and a petition from Mr. Mark Goodson requesting that NHTSA issue a safety standard that would "minimize spinal, cerebral, cranial, and vertebral injuries that occur when light trucks . . . are involved in rear end collisions." Specifically, Mr. Goodson suggested that the glazing material used for the rear window in light trucks should have "safety features so as to minimize compression of the head and spine due to striking the rear glass." The agency proposed a September 1, 1991 effective date for the amendment.

The standard

Standard No. 202 reduces the frequency and severity of neck injuries in rear impacts and other collisions by requiring a head restraint of a specified height, width and strength, for the driver position and the right front seating position. The restraint is intended to limit rearward motion of an occupant's head in a rear impact crash, thereby preventing whiplash injury due to hyperextension of the neck.

Whiplash injuries typically occur in the soft tissues (such as the intervertebral discs, ligaments and skeletal muscle) joining together the vertebrae that support the head (i.e., the cervical spine). Whiplash commonly occurs when the head is thrown suddenly rearward with a snap during a rear impact crash. Whiplash injuries may not be immediately apparent after the crash, and some crash victims may not develop symptoms of pain or discomfort until several days after the accident. Neck pain and stiffness are the most common whiplash symptoms. If the cervical nerves and spine are injured, the head, shoulder, arms or upper back

also could be affected. Whiplash can be difficult to cure because of differing physiological responses among victims. The symptoms can last several days, or can cause long term (i.e., a year or more) disability. Data indicate that whiplash victims miss an average of four days of work. (National Crash Severity Study, June, 1980.)

In general, motor vehicle manufacturers currently use two types of head restraints to meet the requirements of Standard No. 202. "Integral head restraints" use the design of the seat to meet Standard No. 202. Typically, they consist of a seat back that is extended high enough to meet the height requirement of the standard and a seat structure strong enough to withstand the required force levels. The integral head restraint is a nonadjustable or "automatic" device requiring no action on the part of the occupant, regardless of his or her height, to be effective. "Adjustable head restraints" consist of a separate cushion that is attached to the seat back, typically by sliding metal shafts. Adjustable head restraints provide sufficient vertical motion to accommodate different occupant seating heights.

In 1982, NHTSA published a report on the effectiveness and costs of Standard No. 202. ("An Evaluation of Head Restraints, Federal Motor Vehicle Safety Standard 202," NHTSA, February 1982.) The report showed that both integral and adjustable head restraints significantly reduce the overall injury risk in rear impact crashes. Integral restraints reduce the overall risk by approximately 17 percent, and adjustable restraints by 10 percent. (Integral restraints were found to be nearly twice as effective as adjustable head restraints because 75 percent of the latter are left in the lowest position by occupants. In that position, the adjustable head restraint does not adequately protect an occupant of average or greater height.)

The Proposal

NHTSA proposed extending Standard No. 202 to light trucks and vans because national estimates of accident data indicated that approximately 17,800 whiplash injuries occurred annually to front seat occupants 15 years and older in light trucks and vans involved in rear impacts. (NHTSA limited its evaluation to persons 15 years and older because current seat backs seem to be high enough to provide sufficient head support to most children younger than 15 years old.) Those data were for 1982-1985, when approximately 25 percent of the light trucks and vans were equipped

with front seat head restraints. 4.6 percent of all occupants in light trucks and vans in reported rear impacts suffered whiplash injuries and 34.4 percent of those injured in rear impacts suffered whiplash injuries. The agency tentatively concluded that these injury rates could be significantly reduced by applying Standard No. 202 to light trucks and vans. Further, accident data also indicated that there are 11,046 head injuries annually due to impacts with the rear window and/or window frame structure of pickup trucks. The agency thought that head restraints in light trucks might also prevent some minor head injuries to light truck occupants.

NHTSA also proposed extending the standard because increasing numbers of light trucks and vans are being used to transport passengers instead of or in addition to property. The Census Bureau's "Truck Inventory and Use Survey" shows that pickup truck use has changed from 1967 to 1982 from being 51 percent personal transportation to 66 percent personal transportation, and from 26 percent agricultural use to 12 percent agricultural use. NHTSA stated that the greater use of light trucks as passenger carrying vehicles is leading to increases in the number of light trucks and vans on the road, the number of persons transported in such vehicles, and consequently, the number of persons exposed to accident situations where whiplash and other injuries are likely to occur. In addition, the agency believed that as the use of light trucks and vans increases, and as the likelihood that an accident would occur involving a light truck or van increases, the overall number of rear impact collisions into these vehicles would increase.

Additional information on these and other matters discussed in this notice can be found in the agency's final regulatory evaluation, which analyzes in detail the impacts of this rulemaking action. This regulatory evaluation has been placed in Docket No. 88-24; Notice 2.

Based on an analysis of the comments received in response to the notice and other available information, NHTSA has decided to adopt the proposal and extend the applicability of the standard to light trucks and vans. The issues raised by the commenters and the reasons for the agency's decision are discussed below.

Support for the Extension

The commenters generally supported the proposed extension of the standard, although some commenters raised concerns about particular issues, such

as the leadtime, permitting the use of only integral restraints, and the effect of the standard on school buses.

Chrysler said that it supports the proposed extension and that it plans to have head restraints on all its pickups, vans and sport utility vehicles before the proposed effective date of September 1, 1991. Ford also supported the amendment, and stated that it had decided prior to issuance of the NPRM to include head restraints on all of its future light trucks and vans. Ford said it will achieve 100 percent compliance by the proposed effective date. General Motors said it does not oppose the proposal, but questioned whether head restraints would significantly reduce whiplash injuries in light trucks and vans. GM stated that it plans to provide head restraints or high back bucket seats as standard equipment on 80 percent of the projected sales volume of its light truck, van and utility model production for the 1992 model year. GM asked that NHTSA phase-in head restraint requirements for light trucks and vans to enable the manufacturer to meet the standard without having to design, test and install head restraints in vehicles slated to be discontinued after model year 1992, which comprise the remaining 20 percent of its projected sales volume.

The Insurance Institute for Highway Safety (IIHS) also supported the proposed extension, stating that the standard would significantly reduce neck and head injuries to front seat occupants in rear impact crashes. IIHS implied that the extension would be consistent with its longstanding position that passenger car standards should be applied to light trucks and vans. That commenter said that whiplash injuries are a major source of economic loss, due to the extended period of time whiplash victims suffer pain from their injury.

IIHS believed that "passenger carrying vehicles" should be required to have only integral (non-adjustable) head restraints, since these restraints are less expensive and more effective in reducing injuries than adjustable ones. This suggestion for an integral-only requirement was echoed by the American Insurance Association and Motor Voters. The American Insurance Association also asked that NHTSA consider requiring head restraints for rear seats.

NHTSA has decided to adopt the proposed extension to light trucks and vans to reduce whiplash injuries in those vehicles. NHTSA is not excluding any sub-classes of light trucks from the amendment (based on weight, size, type of use, etc.). No commenter supported such an exclusion when asked to

comment on the possibility of one in the NPRM. Further, the agency believes this amendment is practicable and meets the need for safety. The agency disagrees with GM that the agency does not have a reliable basis for assessing the effectiveness of head restraints in light trucks and vans. Since the injury mechanism and types of injuries are similar for passenger cars and light trucks, the effectiveness estimates should be similar. While the rear window in some light trucks may reduce whiplash injuries, a head restraint could reduce some of the head injuries resulting from head impacts with the rear window, and could reduce ejections through the rear window simply by reducing the area through which occupants are ejected.

The agency believes the amendment would not affect visibility significantly or in a way that affects safety. In its comment, Chrysler said that the loss in rearward visibility for short drivers will be minimal and will not depreciate motor vehicle safety to a measurable degree. Chrysler stated that the anatomy of the neck is such that the driver is able to look around his or her head restraint when looking to the rear, unless the head restraint is unusually wide. Further, Chrysler said the passenger-side head restraint generally is not a problem because it is usually in line with the B-pillar. No commenter raised concerns about potential loss of visibility.

NHTSA has excluded vehicles over 10,000 pounds GVWR from this amendment in light of the apparent absence of a safety need for such an extension. National accident data estimates for 1982-1985 indicate that occupants of trucks with a GVWR greater than 10,000 pounds received an annual average of 1,400 whiplash injuries (compared to an annual 17,800 whiplash injuries for occupants of light trucks in the same time period). Further, while NHTSA estimates that 14.8 percent of front seat occupants in passenger cars and 4.6 percent of front seat occupants in light trucks received whiplash injuries in rear end collisions, the whiplash injury rate for occupants of heavy trucks is only 2.5 percent. Since the whiplash injury rate for heavy trucks is relatively low, and because the agency is aware of no indications that heavy trucks are becoming more similar in appearance or use to passenger cars, the same considerations for applying Standard No. 202 to light trucks and vans do not apply to vehicles with GVWR's greater than 10,000 pounds.

NHTSA is not extending the standard to rear seats, in light of the few injuries (81 annually) found in the accident data

(compared to 17,800 whiplash injuries annually for light truck and van front seat occupants). No commenter provided information showing a need for extending the standard to the rear seating positions.

This extension excludes the right outboard front seating position on small school buses. The agency concludes that this seat should be excluded because passenger seats on small school buses must already meet their own seat back height and strength requirements under Standard No. 222, *School Bus Seating and Crash Protection*. It appears that a vast majority of the occupants of that seating position are children for whom current seat backs provide the type of head support that would be offered by a head restraint.

Mid Bus Inc., a school bus manufacturer, expressed concerns about the compatibility of a requirement for a driver's head restraint with the requirements for head impact protection under Standard No. 222. Standard No. 222 limits the acceleration and force distribution of impacts on "contactable surfaces" in the "head impact zone." Mid Bus said that a driver's head restraint on its vehicles would fall within the head impact zone for the passenger seated directly behind the driver. Consequently, Mid Bus said it would have to "repad or replace the driver's seat" to comply with both FMVSS Nos. 202 and 222. Mid Bus seemed to ask NHTSA to exempt a driver's seat meeting Standard No. 202 from the head impact protection requirements of Standard No. 222. (Mid Bus made unexplained references to its compliance with Standard No. 208 (*Occupant Crash Protection*) as reason for an exemption from the school bus head impact protection requirements. NHTSA believes the commenter meant to refer to Standard No. 202, not 208.)

NHTSA does not believe that the two standards are incompatible. There are current designs, such as high back seats, that could be used to meet both standards without having to reposition the driver's seat. NHTSA notes that head restraints on passenger cars are now included in the area of a seat back that must meet the head impact protection requirements of Standard No. 201, *Impact Protection in Interior Impact*. In order to comply with Standard No. 201's impact requirements, passenger car manufacturers install energy absorbing materials (e.g., padding) in the head restraint. (Standard No. 201's requirements for seat backs exclude school buses since head impact requirements are specified by Standard No. 222.) Since head restraints are

currently manufactured with padding or other energy absorbing material to meet head impact protection requirements, NHTSA believes it is practicable for school bus manufacturers to meet both Standard Nos. 202 and 222 without degrading school bus safety.

NHTSA is not requiring that head restraints be integral, as requested by several commenters. The desirability of such a requirement is outside of the scope of this rulemaking proceeding and need not be further addressed in this final rule. However, the agency will continue to monitor injuries in rear end crashes to determine if further rulemaking is desirable.

The regulatory language specified in this amendment differs from the NPRM, in that NHTSA has separated the requirements for light trucks and vans from the passenger car requirements. This change was intended only to clarify the standard; the standard is extended to light trucks and vans as proposed.

Rear Windows

NHTSA requested comments on a number of issues relating to Mr. Goodson's belief that the rear window in light trucks should provide protection against head and neck injuries resulting from impact with that window.

No commenter believed that the rear window would be an acceptable substitute for a head restraint. Several commenters provided information on whether the window could be made safer by means such as using laminated glass, or glass-plastic glazing. Commenters generally agreed with the agency that many parameters would influence the effectiveness of the rear windows, such as the size and shape of the glazing, the spatial relationships between the window and the occupant, the angle of installation and the window mounting. As NHTSA stated in the NPRM, the agency was not proposing to require improvements to pickup truck rear windows. However, the agency is researching glass-plastic glazing and may review issues relating to rear windows in the future, including information on potential costs and benefits associated with these windows.

Leadtime

The current availability of engineering and manufacturing resources needed to implement the proposed extension of Standard No. 202 is illustrated by the availability of head restraints as standard or optional equipment on roughly 64 percent of the 1986 light truck and van models. Commenters indicate that approximately 91 percent of the 1992 model year light truck and van fleet would have head restraints in the

absence of this amendment. No manufacturer showed that installation of head restraints is impracticable by the proposed effective date of the amendment.

The agency declines to phase in the requirements of the amendment as requested by GM. Phased-in requirements are extraordinary measures that are taken only for compelling reasons, such as consumer acceptability of a requirement (e.g., automatic restraints), none of which GM provided. Phased-in requirements are also more difficult to administer and enforce. Under requirements made applicable to all vehicles in a class of vehicles manufactured on or after the effective date, it is obvious from a vehicle's date of manufacture whether the vehicle must comply with the requirement. However, it is not obvious from the date of manufacture alone whether a vehicle must comply with a phased-in requirement.

GM implied that the effective date of the amendment should be delayed because the safety benefits of the rule are not significant enough to warrant the expenditure of resources to design, test and install head restraints in vehicles that will be discontinued in one or two years. NHTSA has sought to minimize the burdens of this rule on manufacturers to the extent possible by providing adequate leadtime. However, the agency has not said that no burdens would be imposed on manufacturers by this rule. In view of the safety benefits of this rulemaking and of the current availability of head restraints as standard or optional equipment on light trucks and vans, NHTSA believes that the burdens imposed on GM by the 1991 date are reasonable and practicable.

For the reasons given above, the agency has decided to adopt the September 1, 1991 effective date. NHTSA recognizes that most vehicles will be able to comply before that date. However, the agency finds good cause for an effective date later than one year from the date this rule has been issued to ensure that all vehicles can be modified as necessary by the September 1, 1991 date.

Costs and Benefits

NHTSA has examined the effect of this rule making action and determined that it is not major within the meaning of Executive Order 12291. It is, however, significant within the meaning of the Department of Transportation's regulatory policies and procedures because it concerns a matter in which there is great public interest. The economic effects of this rulemaking

action are discussed in detail in the regulatory impact analysis.

NHTSA estimates that the average cost per affected vehicle is approximately \$29.45 (\$22 per vehicle plus \$7.45 lifetime fuel penalty cost accounting for 7 additional pounds of weight per vehicle). Based on the estimated number of vehicles that will not have head restraints by the September 1, 1991 effective date (8.71 of the fleet), the estimated total consumer cost of the amendment is \$12.4 million. The agency estimates that this rulemaking action annually will reduce an estimated 510 to 870 injuries.

NHTSA requested information from commenters on whiplash injuries and their costs (including data relating to the cost of the more minor whiplash injuries and/or the cost of the more severe whiplash injuries, with some indication as to what percent of all whiplash injuries are represented by these costs). The agency explained that whiplash injuries are not like the typical AIS 1 (minor cuts or bruises) or even AIS 2 (moderate injuries—broken bones, etc.) injuries, because whiplash injuries often involve longer term pain and stiffness. These effects, along with rehabilitation therapy, often last a year or longer.

Information from Mr. Donald Segraves of the All-Industry Research Advisory Council indicate that nearly half (49.2 percent) of all injury claims paid by automobile insurance companies involve a reported neck sprain or strain. Neck sprain and strain were the most severe injury in about 19 percent of all injury claims paid. The total payment, including pain and suffering, for an average insurance claim for neck sprain or strain was \$2,943. (This information can be found in the docket to this rulemaking.)

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The primary cost effect of this proposed rule will be on manufacturers of light trucks and vans, which are large corporations. Although some small businesses that supply the metal or padding parts for adjustable head restraints or the seats with integral head restraints may experience a greater demand for their products, the agency does not believe that these will be significant. Many van converters are small businesses that have, in the past, installed vehicle seats as part of their conversion processes. However, it appears that incomplete

vehicle manufacturers (typically large manufacturers) are increasingly restricting the options available to final stage manufacturers concerning seat installation, for reasons unrelated to this rule (e.g., FMVSS No. 208 requirement for dynamic testing of light trucks). Thus, this rule is unlikely to have a significant effect on final stage manufacturers.

Small organizations and governmental units will not be significantly affected. Those entities may be purchasing new vehicles covered by today's final rule. While there might be a relatively small price increase for some vehicles, NHTSA does not anticipate any significant impacts for any small entity.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.202 [Amended]

2. Paragraph S2 of Standard No. 202, *Head Restraints*, is revised to read as follows:

S2. *Application*. This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

3. Paragraph S4 is revised to read as follows:

S4. *Requirements*.

S4.1 Each passenger car shall comply with S4.3.

S4.2 Each truck, multipurpose passenger vehicle and bus with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 1991, shall comply with S4.3.

S4.3 *Performance levels*. Except for school buses, a head restraint that conforms to either (a) or (b) shall be provided at each outboard front designated seating position. For school buses, a head restraint that conforms to either (a) or (b) shall be provided for the driver's seating position.

(a) It shall, when tested in accordance with S5.1, during a forward acceleration of at least 8g on the seat supporting structure, limit rearward angular displacement of the head reference line to 45° from the torso reference line; or

(b) It shall, when adjusted to its fully extended design position, conform to each of the following—

(1) When measured parallel to torso line, the top of the head restraint shall not be less than 27.5 inches above the seating reference point;

(2) When measured either 2.5 inches below the top of the head restraint or 25 inches above the seating reference point, the lateral width of the head restraint shall be not less than—

(i) 10 inches for use with bench-type seats; and

(ii) 6.75 inches for use with individual seats;

(3) When tested in accordance with S5.2, the rearmost portion of the head form shall not be displaced to more than 4 inches perpendicularly rearward of the displaced extended torso reference line during the application of the load specified in S5.2(c); and

(4) When tested in accordance with S5.2, the head restraint shall withstand an increasing load until one of the following occurs:

(i) Failure of the seat or seat back; or

(ii) Application of a load of 200 pounds.

4. The introductory text of S5.1 is revised to read as follows:

S5.1 Compliance with S4.3(a) shall be demonstrated in accordance with the following with the head restraint in its fully extended design position:

5. The introductory text of S5.2 is revised to read as follows:

S5.2 Compliance with S4.3(b) shall be demonstrated in accordance with the following with the head restraint in its fully extended design position:

Issued on September 19, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-22499 Filed 9-20-89; 5:00 p.m.]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990-9187]

Shrimp Fishery of the Gulf of Mexico; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects the numbering of the figure in the regulatory text of the emergency interim rule for the Shrimp Fishery of the Gulf of Mexico which was published August 31, 1989 (54 FR 36035).

EFFECTIVE DATE: August 6, 1989, through November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

In rule document 89-20467 beginning on page 36035 in the issue of August 31, 1989, make the following correction:

§ 658.22 [Corrected]

On page 36036, in the third column (part of the revised text of § 658.22(b)) in the last line of the first paragraph, and in the third line of item 3, of the amendatory language, "Figure 2 should read "Figure 1a". On page 36037, "Figure 2" should read "Figure 1a".

Dated: September 18, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-22478 Filed 9-22-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 54, No. 184

Monday, September 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-175-AD]

Airworthiness Directives; Boeing Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, which currently requires repetitive inspections of the main landing gear (MLG) unimproved upper lock strut assemblies for cracks, and replacement, if necessary. This condition, if not corrected, could result in collapse of the MLG and subsequent airplane damage. This action would expand the inspection requirement to include assemblies that may have been improperly reworked, and would require eventual replacement of the upper lock struts with improved parts.

DATES: Comments must be received no later than November 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-175-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 7, 1980, the FAA issued AD 80-17-13, Amendment 39-3885 (45 FR 54732; August 18, 1980), to require repetitive inspections for cracks of the main landing gear (MLG) upper lock strut assembly, Menasco part number (P/N) 15709-5, and replacement, if necessary. Part number 15709-5 incorporated upper lock strut subassembly P/N 15707-3, which proved to be subject to failure. This condition, if not corrected, could lead to the collapse of the MLG and subsequent airplane damage.

Since issuance of that AD, there has been a report of the collapse of a MLG due to failure of an unimproved upper

lock strut, which caused damage to the airplane fuselage. Subsequent to that incident, it was discovered that the vendor had reworked P/N 15707-3 upper lock strut assemblies by shot peening them and reidentified them as "P/N 15707-5;" however, some upper lock struts were apparently incorrectly shot peened for only half of the part length, leaving the part still subject to failure. Some of these reworked parts may not be identified with a part number, some may be identified as P/N 15707-3, and some may have both a 15707-3 and 15707-5 part number. AD 80-17-13 does not require inspection of unidentified upper lock struts or those with both P/N 15707-3 and 15707-5; these part numbered struts would be subject to the same unsafe condition addressed in the existing AD.

Boeing Canada, Ltd., de Havilland Division, has issued Service Bulletin A7-32-93, dated January 30, 1989, which describes procedures for an inspection to determine what configuration of upper lock struts are installed on the MLG, and replacement of unimproved or improperly reworked parts. The service bulletin also describes procedures for a non-destructive test (NDT) and visual inspection to be followed until replacement of the strut with a modified part is accomplished. Transport Canada has classified this service bulletin as mandatory, and has issued Airworthiness Directive CF-80-16R1 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 80-17-13 with a new airworthiness directive that would require an inspection of the main landing gear upper lock struts to determine the configuration installed and replacement, if necessary, in accordance with the service bulletin previously described. A one-time NDT and daily visual inspection of the struts would be required until improved parts are installed.

It is estimated that 46 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1

manhour per airplane to accomplish the required initial inspection and 4 manhours to replace unimproved upper lock struts on both MLG with improved parts, and that the average labor cost would be \$40 per manhour. The required parts will be supplied at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$9,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 80-17-13, Amendment 39-3885 (45 FR 54732; August 18, 1980), with the following new airworthiness directive:

Boeing Canada, Ltd., De Havilland Division:
Applies to de Havilland Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible collapse of a main landing gear (MLG) due to failure of the MLG upper lock strut, accomplish the following:

A. Within 50 hours time-in-service after the effective date of this AD, inspect the left and right main MLG upper lock struts to determine the part number of the struts. Accomplish this inspection in accordance with de Havilland Alert Service Bulletin A7-32-93, dated January 30, 1989.

B. If the part number is identified to be either 15707-5 or 15707-7 (subassembly P/N 15709-7 or 15709-9), the airplane may be returned to service after reprotecting the part with alodine solution #1200 and grey epoxy paint.

C. If the part number is 15707-3, or is both 15707-3 and 15707-5, or cannot be positively identified, prior to further flight, perform a one-time NDT inspection for cracks in accordance with de Havilland Service Bulletin No. 7-32-21, Revision B, dated October 1, 1982, and thereafter perform a visual inspection for cracks prior to the first flight of each day. Upper lock struts with cracks must be replaced prior to further flight.

D. Replacement with a P/N 15709-7 or 15709-9 upper lock strut subassembly (machined P/N 15707-5 or 15707-7), constitutes terminating action for the repetitive inspections required by paragraph C., above.

E. Within 90 days after the effective date of this AD, replace upper lock struts having part number 15707-3, or both 15707-3 and 15707-5, or those that cannot be positively identified, with a P/N 15709-7 or 15709-9 upper lock strut subassembly (machined P/N 15707-5 or 15707-7).

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K1Y5. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certificate Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Seattle, Washington, on September 13, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-22551 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-177-AD]

Airworthiness Directives; Gulfstream Aerospace Model G-II (1159), G-III (1159A), G-IIB (1159B), and G-IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Gulfstream Model G-II, G-III, and G-IIB series airplanes, and to certain Model G-IV series airplanes, which would require a one-time inspection of the takeoff warning systems to ensure proper operation, and repair or modification, if necessary. This proposal is prompted by a recent report of an inoperative takeoff warning system on a Model G-II series airplane, and possible malfunction of the warning system on the Model G-IV series airplane under certain atmospheric conditions. This condition, if not corrected, could result in an airplane taking off in an unsafe takeoff configuration.

DATES: Comments must be received no later than November 3, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-177-AD, 17900 Pacific Highway South, C-63966, Seattle, Washington 98168. The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia, 31402-9980. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1869 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, ACE-130A; telephone (404) 991-3020. Mailing address: FAA, Small Airplane

Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-177-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Recently, a Gulfstream Model G-II series airplane was reported to have an inoperative takeoff configuration warning system. Although the exact cause of the failure is unknown, it is suspected that the associated parts were worn. Further investigation revealed there are no established crew checkout procedures or routine inspections of the takeoff warning system on this model that would enable the flight crew or maintenance personnel to identify wear or a potential failure of these parts. Model G-IIB, G-III, and G-IV series airplanes are equipped with a similar takeoff configuration warning system to the Model G-II and, likewise, do not have routine inspections or checks as part of their normal maintenance program.

Additionally, Gulfstream Aerospace has advised FAA that, during the investigation of the takeoff alarm system operational check on a Model G-IV airplane, it was discovered that an

adjustment of the throttle switch setting on that model is necessary to provide proper takeoff configuration warning system operation in extremely cold weather conditions. When operating in temperatures below -26°C at sea level, the engine will develop takeoff engine pressure ratio (EPR) with throttle settings below the current takeoff alarm switch setting (73°) of 86% HP RPM.

The FAA has reviewed and approved the following Gulfstream Aerospace Corporation service documents:

(1) Gulfstream Customer Bulletin Number 388, Amendment Number 1, dated August 15, 1989, applicable to all Model G-II (1159) and G-IIB (1159B) series airplanes, which describes procedures to perform an operational check of the takeoff warning system, and repair, if necessary.

(2) Gulfstream Customer Bulletin Number 106, dated May 1, 1989, applicable to all Model G-III (1159A) series airplanes, which describes procedures to perform an operational check of the takeoff warning system, and repair, if necessary.

(3) Gulfstream Aircraft Service Change Number 122, dated May 31, 1989, applicable to Model G-IV series airplanes, serial numbers 1000 through 1092, which describes procedures for an operational check and modification of the takeoff range warning indication switches.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive operational checks of the takeoff warning system to ensure proper operation, and repair or modification, if necessary, in accordance with the service bulletins previously described.

There are approximately 531 Gulfstream Model G-II, G-IIB, G-III, and G-IV series airplanes of the affected design in the worldwide fleet. It is estimated that 440 airplanes of U.S. registry would be affected by this AD. It would take approximately 2 manhours per airplane to accomplish the operational checks for the Model G-II, G-IIB and G-III series airplanes, and approximately 12 manhours to accomplish the operational checks and modification for the Model G-IV series airplanes. The average labor cost would be \$40 per manhour. The estimated cost for the required modification parts for the Model G-IV series airplanes is \$540 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$109,460.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream: Applies to all Model G-II (1159), G-III (1159A), and G-IIB (1159B) series airplanes; and certain Model G-IV series airplanes, Serial Numbers 1000 through 1092; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an airplane from taking off in an unsafe takeoff configuration, accomplish the following:

A. For all Model G-II (1159) and G-IIB (1159B) series airplanes: within 25 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 150 hours time-in-service, perform an operational check of the takeoff warning system, in accordance with Gulfstream Customer Bulletin Number 388, Amendment 1, dated August 15, 1989. If the system does not function properly, it must be repaired prior to further flight, in accordance with the Customer Bulletin.

B. For all Model G-III (1159A) series airplanes: within 25 hours time-in-service

after the effective date of this AD, and thereafter at intervals not to exceed 150 hours time-in-service, perform an operational check of the takeoff warning system, in accordance with Gulfstream Customer Bulletin Number 106, dated May 1, 1989. If the system does not function properly, it must be repaired prior to further flight, in accordance with the Customer Bulletin.

C. For Model G-IV series airplanes, Serial Numbers 1000 through 1092: within 25 hours time-in-service after the effective date of this AD, perform an operational check and modification of the takeoff range warning indication switches, in accordance with Gulfstream Aircraft Service Change Number 122, dated May 31, 1989. The operational check must be repeated at intervals not to exceed 150 hours time-in-service. If the system does not function properly, it must be repaired prior to further flight, in accordance with the Service Change.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI), who will either concur or comment, and then send it to the Manager, Atlanta Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Issued in Seattle, Washington, on September 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-22552 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ANM-9]

Proposed Alteration of VOR Federal Airways V-101 and V-484; ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter V-101 from Burley, ID, to Hailey, ID, and V-484 from Hailey, ID, to Twin Falls, ID. This action would reduce air traffic congestion in the vicinity of Hailey, ID, reduce controller workload and improve flight planning for pilots.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 89-ANM-9, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this

notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-101 from Burley, ID, to Hailey, ID, and V-484 from Hailey, ID, to Twin Falls, ID. This action would reduce air traffic congestion in the vicinity of Hailey, ID, which serves the Sun Valley resort area's Friedman Memorial Airport. At the present time, there are no authorized landing or departing procedures for this airport. During peak traffic periods, the controlling facility for Friedman Memorial Airport applies traffic management restrictions and temporarily reconfigures airspace sectors. Establishing these airways will increase air safety and improve flight planning. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-101 [Amended]

By removing the words "INT Burley 344" and Pocatello, ID, 286° radials," and substituting the words "INT Burley 344° T(328° M) and Pocatello, ID, 286° T(269° M) radials; Hailey, ID, NDB; to the INT Pocatello 286° T(269° M) and Twin Falls, ID, 355° T(337° M) radials."

V-484 [Amended]

By removing the words "From INT Twin Falls, ID, 007° and Burley, ID, 323° radials," and substituting the words "From Hailey, ID, NDB; INT Twin Falls, ID, 007° T(349° M) and Burley, ID, 323° T(305° M) radials;"

Issued in Washington, DC, on September 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22556 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ACE-24]

Proposed Designation of Transition Area; Cameron, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a 700-foot transition area at Cameron, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Cameron Memorial Airport, Cameron, Missouri, utilizing the

Cameron nondirectional radio beacon (NDB) as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before November 9, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting written data, views, or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) to designate a 700-foot transition area at Cameron, Missouri. To enhance airport usage, the City of Cameron, Missouri, is installing an NDB to serve as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Cameron, Missouri, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This action would change the airport status from VFR to IFR.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety; Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the FAR (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Cameron, MO [New]

That airspace extending upwards from 700 ft. above the surface within a 5-mile radius of the Cameron Memorial Airport (lat. 39° 43' 36", long. 94° 16' 30"), and within 3 miles each side of the 187° T, 183° M bearing from the Cameron Memorial Airport, extending from the 5-mile radius to 8.5 miles south of the airport.

Issued in Kansas City, Missouri, on August 30, 1989.

Clarence E. Newbern,
Manager, Air Traffic Division.

[FR Doc. 89-22555 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 89-ANM-13]

Proposed Establishment of Jet Route J-589; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Jet Route J-589 between Roseburg, OR, and Victoria, BC, Canada. This action would establish a route by which an aircraft could avoid the arrival paths for airports in the Seattle, WA, area. This action would also enhance traffic management, decrease controller workload, and provide pilots with a direct routing.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 89-ANM-13, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 89-ANM-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish Jet Route J-589 between Roseburg, OR and Victoria, BC, Canada. This action would provide aircraft traversing west of the Seattle-Tacoma International Airport a route to avoid the arrival paths for airports in the Seattle, WA, area. This action would enhance traffic management, decrease controller workload, and provide pilots with a direct routing. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore — (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-589 [New]

From Roseburg, OR; Corvallis, OR; to Victoria, BC, Canada. The airspace within Canada is excluded.

Issued in Washington, DC, on September 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22554 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 89-ANM-11]

Proposed Realignment of J-90; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign J-90 to enhance procedures for aircraft arriving and departing airports in the Seattle, WA, area. This action would reduce controller workload and aid flight planning.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 89-ANM-11, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to realign J-90 between Moses Lake, WA, and Helena, MT. Realigning J-90 would create an outbound route for aircraft departing the Seattle, WA, area. Arrival flights would utilize J-70. This action would enhance traffic management, reduce controller workload, and aid flight planning. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-90 [Amended]

By removing the words "via Ephrata, WA; Mullan Pass, ID; Lewistown, MT;" and by substituting the words "via Moses Lake, WA; Helena, MT;"

Issued in Washington, DC on September 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22553 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27247; File No. S7-27-89]

RIN 3235-AA48

Initiation or Resumption of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment amendments to Rule 15c2-11 under the Securities Exchange Act of 1934 ("Exchange Act"). Rule 15c2-11 governs the submission and publication of quotations by brokers or dealers for certain over-the-counter securities. The

proposals would revise that Rule by requiring a broker-dealer to review the Rule's specified information before initiating or resuming a quotation in a quotation medium, and to have a reasonable basis to believe that the information is true and accurate and obtained from reliable sources. The proposed amendments also would require a broker-dealer initiating or resuming quotations in an issuer's securities to have in its records a copy of any trading suspension order, or Exchange Act release announcing a trading suspension, issued by the Commission with respect to any of the issuer's securities during the preceding year and to review the other required information in its records in light of the information contained in that order or release.

If the issuer of the security is a reporting company that has not filed its first annual report, the proposals would require a broker-dealer to have in its records a copy of the effective registration statement subjecting the issuer to reporting obligations under the Exchange Act, together with any subsequent reports filed thereunder. The broker-dealer also would be required to obtain a copy of any current report filed by the reporting company with the Commission after its latest annual report. Additionally, the Commission is proposing amendments regarding the time period for which broker-dealers must retain the required information, and the time by which broker-dealers must furnish information to the interdealer quotation system to commence quotations. Another proposed amendment would clarify the exception for NASDAQ securities.

Finally, the Commission is soliciting comment on whether to modify or eliminate the Rule's "piggyback" provisions that allow broker-dealers under certain conditions to enter quotations without having the information specified by the Rule.

DATE: Comments must be received on or before December 1, 1989.

ADDRESS: Interested persons should submit three copies of their written data, views, and arguments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and refer to File No. S7-27-89. All submissions will be available for public inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow or Michael T. Dorsey,

Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, telephone (202) 272-2848.

SUPPLEMENTARY INFORMATION:

I. Introduction and Overview of Rule 15c2-11

A. Recent Commission Actions

The Commission recently established the Penny Stock Fraud Task Force ("Task Force") in response to increasing reports of fraud and manipulation in the penny stock market.¹ Penny stocks are low-priced securities that often are quoted in the "pink sheets."² The Commission's efforts to combat abuses in the penny stock market have included regulatory initiatives,³ enforcement

¹ See Remarks of Chairman David S. Ruder before the Twenty-First Annual Rocky Mountain-State-Federal-Provincial Securities Conference (October 21, 1988) ("Chairman's Remarks"), at 14. See also *The Penny Stock Scandal*, Bus. Wk. (January 23, 1989) (Cover Story); *Never but Never Give a Sucker an even Break*, Forbes (January 9, 1989) at 46, col. 1.

² See *Beware of Penny Stock Fraud!*, Information For Investors, U.S. Securities and Exchange Commission (November 1988).

The National Quotation Service, also known as the "pink sheets," is published and distributed nationally by the National Quotation Bureau, Inc. ("NQB"), and is the principal interdealer quotation system for equity securities that are not listed on an exchange or quoted on the NASDAQ system. Other quotation media are distributed in limited geographical areas, e.g., the Regional Inter-Dealer Over-the-Counter Stock Quotations prepared by Metro Data Company in Minneapolis, Minnesota (known as the "white sheets"). The "pink sheets" and these other quotation media reflect loosely organized markets for securities of lesser-known issuers, generally characterized by low levels of trading activity and dealer competition. Information concerning these issuers often is not readily available to the marketplace, and few analysts regularly follow their stocks. In this Release, the securities quoted in these quotation media are referred to as "pink sheet securities," and the markets in which these types of securities are traded are referred to as the "pink sheet market."

The National Association of Securities Dealers, Inc. ("NASD") has submitted a proposed rule change, File No. SR-NASD-88-19, pursuant to Rule 19b-4 under the Exchange Act, 17 CFR 240.19b-4, in which it seeks to establish a new service called the OTC Bulletin Board Display Service. The OTC Bulletin Board Display Service would permit eligible NASD member firms to enter, update, and retrieve quotation information, including unpriced indications of interest, on a real-time basis in non-NASDAQ and non-listed securities (i.e., pink sheet securities). The Commission has published this rule proposal for public comment. See Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096.

³ For example, the Commission recently adopted Rule 15c2-6, 17 CFR 240.15c2-6, under the Securities

actions,⁴ and trading suspensions.⁵

With the recent proliferation of fraudulent and manipulative schemes typically involving companies with few or no assets, earnings, or operations ("shell companies"),⁶ and the significant increase in the number of trading suspensions,⁷ the Commission believes that it is appropriate to strengthen and clarify a broker-dealer's responsibilities when publishing quotations for pink sheet securities.⁸ As the Commission has stated:

The importance of a broker-dealer's responsibility to use diligence where there are any unusual factors is highlighted by the fact that violations of the antifraud and other provisions of the securities laws frequently depend for their consummation, as here, on the activities of broker-dealers who fail to make diligent inquiry to obtain sufficient information to justify their activity in the security.⁹

Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78a et seq., which imposes certain requirements on broker-dealers who recommend purchases of pink sheets securities by persons who are not accredited investors or established customers of the firm. Securities Exchange Act Release No. 27160 (August 22, 1989).

⁴ See, e.g., *Rooney, Pace, Inc.*, Securities Exchange Act Release No. 25125 (November 16, 1987), 48 S.E.C. 891; *SEC v. Stoneridge Securities, Inc.*, (Civ. No. 5-89-096) (D. Nev.), L.R. No. 11995 (February 3, 1989), 42 SEC Docket (CCH) 1260; *SEC v. Hughes Capital Corp.*, (Civ. No. 88-5238) (D.N.J.), L.R. No. 11939 (December 13, 1988), 42 SEC Docket (CCH) 630; *SEC v. Colonial International Import, Ltd.*, (Civ. No. 85-510-JLQ) (E.D. Wash.), L.R. No. 11896 (October 17, 1988), 42 SEC Docket (CCH) 71; *SEC v. Goldcor, Inc.*, (Civ. No. 88-612-CIV-orl-18) (M.D. Fla.), L.R. No. 11847 (August 24, 1988), 41 SEC Docket (CCH) 960.

⁵ Within a six-month period in 1988, the Commission suspended trading in the common stock of more than 100 pink sheet issuers. See, e.g., Securities Exchange Act Release No. 25550 (April 5, 1988), 40 SEC Docket (CCH) 841; Securities Exchange Release No. 25813 (June 21, 1988), 41 SEC Docket (CCH) 276; Securities Exchange Act Release No. 26064 (September 7, 1988), 41 SEC Docket (CCH) 1021.

The Commission is authorized under Section 12(k) of the Exchange Act, 15 U.S.C. 781(k), to suspend summarily trading in any security (other than an exempted security) for a period not exceeding ten days. The Commission may issue such an order if in its opinion the public interest and the protection of investors so require. See *SEC v. Sloan*, 436 U.S. 103, 112 (1978). For example, the Commission has issued such orders when an issuer had failed to satisfy its statutory disclosure obligations or appeared to have disseminated information that was materially false or misleading. See, e.g., Securities Exchange Act Release No. 25737 (May 24, 1988), 40 SEC Docket (CCH) 1307 ("Release 34-25737") (suspending trading in securities of AMX International for a 10 day period).

⁶ See Chairman's Remarks, n.1 *supra*.

⁷ See n.5 *supra*.

⁸ Of approximately 100 securities in the Denver, Colorado region in which trading was suspended in 1988, approximately 50 percent reappeared in the pink sheets. It appears that quotations may have

Continued

Because fraudulent and manipulative schemes can rarely succeed without the participation of broker-dealers,¹⁰ it is essential that a broker-dealer considering submitting quotations for a security be alert to unusual circumstances that may be present,¹¹ such as the issuance of a trading suspension.

Rule 15c2-11 ("Rule 15c2-11" or "Rule") under the Exchange Act¹² governs the publication and submission of quotations for securities traded in the "pink sheet market," and requires that brokers and dealers have certain information about the issuer and its securities before publishing quotations. The Commission is concerned that broker-dealers may not be complying with the requirements of Rule 15c2-11 when submitting a quotation for a security following the expiration of a trading suspension. Indeed, many broker-dealers apparently initiate or resume quotations without knowing the basis for the trading suspension, or in some cases, that there even had been a trading suspension.

Accordingly, the Commission is providing its interpretive views on the steps that a broker-dealer must take in order to comply with the current Rule following a trading suspension in a security. Moreover, the Commission is proposing an amendment to the Rule that would require broker-dealers to review the Rule's specified information before initiating or resuming a quotation, whether or not there has been a trading suspension, and to have a reasonable basis to believe that the information is true and correct and obtained from reliable sources. The Commission also is proposing amendments that clarify a broker-dealer's obligation when submitting quotations following a trading suspension; modify the information maintenance requirements regarding

reporting issuers; clarify the time period that the broker-dealer must maintain the information; revise the time period by which a broker-dealer must furnish the form to an interdealer quotation system; and clarify the exception for NASDAQ securities. Finally, the release seeks comment on the Rule's "piggyback" provision.

B. Operation of Current Rule 15c2-11

Rule 15c2-11 regulates the initiation or resumption of quotations in a quotation medium by a broker or dealer for certain over-the-counter securities. Adopted in 1971,¹³ the Rule was designed primarily to prevent certain manipulative and fraudulent trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by shell companies,¹⁴ or other companies having outstanding but infrequently-traded securities. The Rule was intended to prevent brokers and dealers from furnishing initial quotations in the absence of any information about the issuer, an activity that was critical to the success of many of the unlawful schemes.¹⁵ The Rule focuses on the fraudulent and manipulative potential of quotations.¹⁶ A violation of the Rule may occur regardless of whether the broker-dealer also is engaged in retail activity in the

security,¹⁷ or whether any interdealer transactions have occurred.¹⁸

Subject to certain exceptions,¹⁹ the Rule prohibits a broker or dealer from submitting a quotation²⁰ for a security in a quotation medium²¹ unless it has in its records specified information concerning the security and the issuer and, in certain circumstances, furnishes the information to the interdealer quotation system two days before the publication of such quotation.²² Specifically, a broker or dealer that initiates or resumes a quotation for the securities of an issuer must have in its records: (1) In the case of an issuer that has conducted a recent public offering registered under the Securities Act of 1933 ("Securities Act")²³ or effected

¹⁷ See *Alessandrini*, 45 S.E.C. at 401. The objective in having quotations published for a security may not be to trade the security, but to establish an apparent value for the security. Apparent value is important, for example, where the pink sheet security is serving as collateral for loans. See, e.g., *id.* at 400.

¹⁸ See *Richfield Securities, Inc.*, Securities Exchange Act Release No. 26129 (September 29, 1968), 41 SEC Docket (CCH) 1235.

¹⁹ The Rule excepts from its coverage publication or submission of a quotation in the over-the-counter market for a security admitted to trading on a national securities exchange (if traded on that exchange on the same day or on the day before submission or publication of the quotation), or a security authorized for quotation in an interdealer quotation system operated by a registered securities association (the only such system currently existing is the NASDAQ system operated by the National Association of Securities Dealers, Inc.). See paragraphs (f)(1) and (f)(5) of Rule 15c2-11, respectively. 17 CFR 240.15c2-11(f)(1) and (f)(5). See also section II.F. *infra*. As a result, the Rule's focus is the residual over-the-counter market, principally reflected in the pink sheets. See n.2 *supra*.

²⁰ "Quotation" is defined in paragraph (e)(3) of the Rule, 17 CFR 240.15c2-11(e)(3), to include any advertisement by a broker or dealer that he wishes to buy or sell a particular security at a specified price or otherwise. In 1984, the Commission expanded the definition of quotation to include the publication by broker-dealers of trading interest in a security without specifying the prices at which the broker-dealer would engage in those transactions ("name-only entries"). Release 34-21470, 49 FR at 45119. A few commentators predicted that the extension of the informational requirements to the publication of name-only entries would cause market makers to withdraw quotations, but the number of quotations in the NQB's "pink sheets" has remained relatively constant.

²¹ The term "quotation medium" is defined broadly in paragraph (e)(1) of the Rule, 17 CFR 240.15c2-11(e)(1), to include any interdealer quotation system or any publication or electronic communications network or other device used by broker-dealers to make known their interest in transactions in any security. The term "interdealer quotation system" is defined in paragraph (e)(2) of the Rule, 17 CFR 240.15c2-11(e)(2), to mean "any system of general circulation to brokers or dealers which regularly disseminates quotations or identified brokers or dealers."

²² See 17 CFR 240.15c2-11(d).

²³ 15 U.S.C. 77a *et seq.*

been resumed or initiated in a significant number of these securities on the basis of inadequate information. See, e.g., *Richfield Securities, Inc.*, Securities Exchange Act Release No. 26129 (September 29, 1968), 41 SEC Docket (CCH) 1235.

¹⁰ *Alessandrini & Co., Inc.*, 45 S.E.C. 399, 406 (1973), *aff'd without opinion sub. nom. Budin v. SEC*, 508 F.2d 836 (2d Cir. 1974). See also *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 810-811 (2d Cir. 1975).

¹¹ See, e.g., Securities Exchange Act Release 4982 (July 2, 1969), 34 FR 11581; *Alessandrini*, 45 S.E.C. at 406.

¹² See, e.g., *Butcher & Singer Inc.*, 48 S.E.C. 640, 641-643, *aff'd without opinion*, 833 F.2d 303 (3d Cir. 1987). See also Securities Act Release No. 4445 (February 2, 1962).

[B]rokers and dealers should be aware that the submission or publication of a quotation at a price which does not bear a reasonable relationship to the nature and scope of the issuer's business or its financial status or experience, may constitute a part of a fraudulent or manipulative scheme.

¹³ 17 CFR 240.15c2-11.

¹⁴ See Release 34-9310, 36 FR at 18641. Rule 15c2-11 was adopted under section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2), among other sections. Section 15(c)(2) gives the Commission broad authority to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the over-the-counter securities market.

¹⁵ Rule 15c2-11 was intended to address a variety of questionable practices involving a "spin-off" or other distribution to the public of the securities of a shell corporation and the subsequent active trading of those shares at increasingly higher prices that bore no relation to the value of the securities. See Release 34-9310, 36 FR at 18641.

¹⁶ Release 34-9310, 36 FR at 18641; see also Securities Exchange Act Release No. 21470 (November 15, 1964), 49 FR 45117 ("Release 34-21470") (adopting amendments to Rule 15c2-11). The Rule "seeks to guard against the fraudulent and manipulative potential inherent * * * when a * * * dealer submits quotations concerning any infrequently-traded security in the absence of certain information." *Gotham Securities Corporation*, 46 S.E.C. 723, 725 (1976), citing Release 34-9310.

¹⁷ In 1985, the Commission published a release seeking comment on the costs and benefits of the Rule. Securities Exchange Act Release No. 21914 (April 1, 1985), 50 FR 14111 ("Release 34-21914"). A summary of the comments has been prepared by the staff and is available in File S7-14-85. Although commentators expressed some concerns with the Rule and suggested various modifications, the majority of commentators supported the Rule and/or its goal of preventing fraudulent and manipulative activity.

pursuant to Regulation A under the Securities Act,²⁴ a copy of the prospectus²⁵ or offering circular;²⁶ or (2) in the case of an issuer that must file with the Commission reports pursuant to sections 13²⁷ or 15(d)²⁸ of the Exchange Act or is an insurance company of the kind specified in section 12(g)(2)(G) of the Exchange Act,²⁹ the issuer's most recent annual report and any reports required to be filed at regular intervals thereafter;³⁰ or (3) in the case of foreign issuers exempt from section 12(g) of the Exchange Act, the information furnished to the Commission pursuant to Rule 12g3-2(b)³¹ under the Exchange Act.³² In order to submit a quotation for the security of an issuer that falls into none of the above categories, the broker or dealer must have in its records the sixteen items of information, including certain financial information, specified in paragraph (a)(5) of the Rule.³³ This information must be reasonably current³⁴ in relation to the day the quotation is submitted, the broker or dealer must have no reasonable basis for believing that the information is not true and correct or reasonably current, and such information must be obtained from sources that the broker or dealer has a reasonable basis for believing are reliable. In addition, paragraph (c) of the Rule requires a broker or dealer to maintain in its records any other information (including adverse information) regarding the issuer that comes to its knowledge or possession before the publication or submission of the quotation.³⁵

Under paragraph (f)(3),³⁶ the so-called "piggyback" provision, the Rule's information maintenance requirements are inapplicable when a broker or dealer enters in an interdealer quotation system,³⁷ a quotation for a security that has been the subject of quotations on at least 12 business days during the previous 30 calendar days, with no more than four consecutive business days elapsing without any quotations. As a result, until 30 calendar days have elapsed from the date of publication of the initial broker-dealer's quotation, no broker-dealer may publish a quotation unless it has satisfied the Rule's information gathering requirements.³⁸ After the 30 day period, a broker-dealer may publish a quotation without having the required information if the 12 and four day tests also are satisfied (*i.e.*, the broker-dealer may "piggyback" on the published quotations). Moreover, unless the interdealer quotation system specifically identifies quotations that represent unsolicited customer indications of interest, a broker-dealer may piggyback only where a security has been the subject of both bid and ask quotations at specified prices for the time periods enumerated in the Rule.³⁹ The piggyback provision presumes that the quotation of a security subject to regular and frequent two-sided market making will reflect independent supply and demand forces.⁴⁰

Consequently, the information gathering requirement of the Rule applies only upon initiation or resumption of a quotation in a quotation medium for a security that has not been quoted with the required frequency during the previous 30 days. Rule 15c2-11 contains no requirement that a broker-dealer obtain updated information about the issuer or its securities if the piggyback exception applies to the quotation. Of course, many market makers update their information routinely to keep abreast of developments affecting the issuer, to satisfy other obligations under the securities laws (*e.g.*, the need to have a reasonable basis when recommending securities to customers),⁴¹ and to satisfy

suitability requirements.⁴²

C. Impact of a Trading Suspension on the Operation of the Rule

Following the expiration of any trading suspension in a security lasting more than four business days, the piggyback provision of the Rule is unavailable.⁴³ Therefore, following the expiration of a trading suspension, the broker-dealer must satisfy the Rule's information requirements before the initiation or resumption of quotations for the security in a quotation medium.⁴⁴ Because of the Commission's concern that a number of broker-dealers have not complied with the Rule's requirements following trading suspensions, the Commission is providing its interpretative views on the responsibilities of broker-dealers initiating or resuming quotations in such circumstances.

A trading suspension is a material event affecting the market for an issuer's securities. In determining whether to submit quotations after the termination of a trading suspension, the broker-dealer should understand the basis upon which the Commission imposed the suspension. The reasons stated by the

(1988); see also Securities Exchange Act Release No. 26100 (September 22, 1988), 53 FR 37778, 37787, and cases cited therein. The Commission has stated that the Rule "is not intended to, and does not, excuse brokers and dealers from their duty to comply with applicable registration and other anti-fraud provisions of the federal securities laws and Commission rules." Release 34-9310, 36 FR at 18641.

⁴² See, *e.g.*, New York Stock Exchange Rule 405, NYSE Guide (CCH) ¶2405; NASD Rules of Fair Practice, Art. III, Sec. 2, NASD Manual (CCH) ¶2152.

⁴³ See discussion of the piggyback exception in text at nn. 36-40 *supra*.

⁴⁴ See Securities Exchange Act Release No. 19673 (April 14, 1983), 48 FR 17111, 17114 ("Release 34-19673"); Letter regarding Rothchild Securities Corporation, [1973-1974 Decisions] Fed. Sec. L. Rep. (CCH) ¶79,693 (December 27, 1973).

The release announcing a trading suspension invariably includes the following cautionary language specifically addressed to broker-dealers:

Furthermore, broker and dealers should be aware of the fact that pursuant to Rule 15c2-11 under the Exchange Act, at the termination may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation, but immediately contact the staff of the Securities and Exchange Commission . . . If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

See, *e.g.*, Release 34-25737, *supra* n.5.

²⁴ 17 CFR 230.251 *et seq.*

²⁵ 17 CFR 240.15c2-11(a)(1) (registration statement must have become effective within the preceding 90 calendar days).

²⁶ 17 CFR 240.15c2-11(a)(2) (notification regarding the offering must have become effective within the preceding 40 calendar days).

²⁷ 15 U.S.C. 78m.

²⁸ 15 U.S.C. 78o(d).

²⁹ 15 U.S.C. 78j(g)(2)(G).

³⁰ 17 CFR 240.15c2-11(a)(3).

³¹ 17 CFR 240.12g3-2(b).

³² 17 CFR 240.15c2-11(a)(4).

³³ 17 CFR 240.15c2-11(a)(5). Paragraph (a)(5) also provides: "This paragraph (a)(5) shall not apply to any security of an issuer included in paragraph (a)(3) of this section unless a report is not reasonably available to the broker or dealer. A report or statement of an issuer described in paragraph (a)(3) of this section shall be 'reasonably available' when such report or statement is filed with the Commission."

³⁴ See Rule 15c2-11(g), 17 CFR 240.15c2-11(g), which provides a presumption for determining whether information is "reasonably current."

³⁵ 17 CFR 240.15c2-11(c).

³⁶ 17 CFR 240.15c2-11(f)(3).

³⁷ See n. 21 *supra*.

³⁸ See Release 34-9310, 36 FR at 18641 n.2.

³⁹ Compare subparagraph (f)(3)(i) with subparagraph (f)(3)(ii) of the Rule.

⁴⁰ See Release 34-21470, 49 FR at 45121.

⁴¹ See, *e.g.*, *Hanly v. SEC*, 415 F.2d 589 (2d Cir. 1969), *affirming Richard J. Buck & Co.*, 43 S.E.C. 998

Commission can indicate that the broker-dealer may not have a reasonable basis to believe that the information about the issuer in the broker-dealer's knowledge or possession is true and correct. The trading suspension order also may alert the broker-dealer to the possibility that fraudulent and manipulative activities may be occurring in the market for the securities of the subject issuer. The factors cited by the Commission in its order as the basis for the trading suspension, however, do not constitute an adjudication of fact or law with respect to those matters.⁴⁵ Therefore, if a broker-dealer reasonably believes after appropriate inquiry, as discussed below, that the Commission's concerns expressed in the trading suspension order were unfounded or have been remedied, the broker-dealer will be able to satisfy the requirements of Rule 15c2-11 and initiate or resume quotations for the security.

In order to understand accurately the basis for the trading suspension, the broker-dealer should obtain a copy of the trading suspension order, or a copy of the Commission release announcing the trading suspension.⁴⁶ Before initiating or resuming a quotation for pink sheet securities that have been the subject of a trading suspension, the broker-dealer must conduct a careful review in a professional manner of the basis for the trading suspension to determine whether there is a reasonable basis for the broker-dealer to believe that the information about the issuer in the broker-dealer's knowledge or

possession is true and correct.⁴⁷ The broker-dealer may need to obtain additional information to cure deficiencies in that information.

Before submitting a quotation for a security following a trading suspension, the broker-dealer also must reasonably believe that the information is obtained from a reliable source.⁴⁸ In many cases, the information required by the Rule had been provided to the broker-dealer by the issuer or a promoter before the trading suspension. Following a trading suspension, the broker-dealer may need to inquire into the reliability of the source, particularly when the same source is providing new or updated information. At a minimum, the inquiry should consist of receiving assurances or additional information from the source (in most cases, the issuer) with respect to the matters cited in the order. If the broker-dealer then has a reasonable basis to believe that the information is true and correct, and reasonably believes that the source is reliable, the requirements of the Rule will be satisfied. Reliance on statements or assurances from the issuer or promoter in these circumstances, however, requires great caution.⁴⁹

In conducting its inquiry, the broker-dealer may have to obtain support for the accuracy of the information or the source's reliability by conducting an independent review or obtaining verification of information provided by the issuer or promoter.⁵⁰ For example,

⁴⁷ Cf. Release 34-19673, 48 FR at 17114. For example, if the Commission issued a trading suspension because it had serious questions regarding the adequacy or accuracy of the issuer's financial statements, the broker-dealer may be unable to provide itself with a reasonable basis for relying on the questioned financial statements even if they otherwise satisfy the Rule's presumption of "reasonably current" information. See 17 CFR 240.15c2-11(g). The presumption that information is "reasonably current" is vitiated if the broker-dealer has "information to the contrary." *Id.*

⁴⁸ Inherent in the requirement to have a reasonable belief that the source is reliable is the obligation that the broker-dealer know the identity of the source of the information. See *Bunker Securities Corporation*, 48 S.E.C. 859, 865 (1987).

⁴⁹ "[I]nformation received from little known companies or their officials, transfer agent or counsel must be treated with great caution as these are the very parties that may be seeking to deceive the firm." Securities Act Release No. 5168 (July 7, 1971).

⁵⁰ The fact that the issuer had assembled a new package of information following a trading suspension, however, would not necessarily call into question the information as having been obtained from an unreliable source. If the new information were prepared by a person independent of the issuer, the broker-dealer would not have to question the reliability of that source if under the circumstances the broker-dealer had a reasonable basis for believing that the source is reliable.

an opinion of an independent accountant or attorney may be warranted.

A broker-dealer may have difficulty obtaining the necessary information about an issuer after the expiration of a trading suspension. This difficulty, however, does not relieve a broker-dealer of its responsibilities under the Rule. Without having a reasonable basis to believe that its information is true and correct and obtained from reliable sources, the broker-dealer should not submit quotations for the securities of the subject issuer for publication in a quotation medium.⁵¹

II. Proposed Amendments

The Commission is proposing an amendment to the Rule that would require broker-dealers to review the Rule's specified information before initiating or resuming a quotation, whether or not there has been a trading suspension, and have a reasonable basis to believe that the information is true and correct and obtained from reliable sources. Moreover, as discussed above, the Commission is concerned about the initiation or resumption of quotations following the expiration of a trading suspension under circumstances when it is questionable whether the broker or dealer submitting the quotations has true and correct information obtained from reliable sources.⁵² Therefore, the Commission proposes to clarify the obligations of a broker-dealer under the Rule if the Commission has issued a trading suspension. The amendments also would: modify the information gathering requirements of the Rule

⁵¹ The situation in which broker-dealers may be precluded from publishing quotations for a security because they lack the information required by the Rule should be distinguished from the situation following a trading suspension under Section 12(k). See n. 5 *supra*. A trading suspension halts all trading in a security for the duration of the period. In contrast, the inability of a broker-dealer to publish market making quotations does not prevent investors from engaging in transactions in the security. Indeed, Rule 15c2-11(f)(2) provides that broker-dealer may publish quotations on behalf of a customer representing the *bona fide* customer's unsolicited indication of interest in buying or selling a security in situations where the broker-dealer does not have the required information. See Release 34-21470, 49 FR at 45119-45120 and n. 13.

⁵² See *Richfield Securities, Inc.*, Securities Exchange Act Release No. 26129 (September 29, 1988), 41 SEC Docket (CCH) 1235. The Commission found that Richfield violated section 15(c)(2) of the Exchange Act and Rule 15c2-11 by publishing a quotation for the securities of Hiex Development USA, Inc. ("Hiex") in the pink sheets following a ten-day trading suspension in the securities of Hiex. This quotation was published notwithstanding Richfield's inability to meet the requirement under Rule 15c2-11 that it have no reasonable basis for believing that the information about Hiex in its file was not true and correct and reasonably current at the time the quotation was published.

⁴⁵ See, e.g., Release No. 34-25737, *supra* n. 5, in which the Commission announced a ten day trading suspension for the securities of AMX International, Inc., stating:

The Commission suspended trading in the securities of AMX International because of an apparent lack of current and accurate public information concerning the financial condition of the company and the value of its assets; and in view of questions that have been raised about, among other things, the adequacy and accuracy of publicly disseminated information concerning these matters.

⁴⁶ Copies of Commission releases may be obtained from the Commission's Public Reference Room in Washington, D.C. and in regional Commission offices. Commission releases are available from information databases (e.g., LEXIS), and also are published in the SEC Docket, which is available from publication services (e.g., Commerce Clearing House). Furthermore, the Commission's staff generally endeavors to notify identified market makers in a security about a trading suspension in that security. See n. 60 *infra*. Finally, a proposed Commission telephone service should facilitate retrieval of trading suspension orders by broker-dealers. See discussion in Section II. A. *infra*.

Proposed paragraphs (a)(6) and (h) of the Rule would require broker-dealers to obtain a copy of the trading suspension order and review the 15c2-11 information in light of the information contained in the order. See Sections II. B. and C. *infra*.

regarding reporting issuers; clarify the time period the broker-dealer must retain the specified information; revise the time period by which a broker-dealer must furnish the form to the interdealer quotation system to initiate or resume a quotation; and clarify the exception for NASDAQ securities.

A. Revisions to Paragraph (a)

There currently is no explicit requirement in the Rule that a broker-dealer review the Rule 15c2-11 information in its records prior to initiating or resuming quotations. However, "[t]he Rule is intended to require a broker-dealer to give some measure of attention to financial and other information about the issuer of a security before it commences trading in that security."⁵³ Moreover, inherent in the requirements of current paragraph (a)(5), both currently and as proposed to be amended, with respect to accuracy and currency of the information gathered by broker-dealers and with respect to the reliability of their sources of that information, is the premise that the broker-dealer must at least verify that it has received the required information and know the source of the information. Beyond that, the "measure of attention" that the broker-dealer must pay to the information will vary with the circumstances.⁵⁴

The Commission proposes to clarify and enhance a broker-dealer's obligation to obtain and review information prior to initiating or resuming quotations for a pink sheet security. The proposed amendment to paragraph (a) would impose an explicit requirement that the broker-dealer review the documents or information (collectively, "information") specified in subparagraphs (a)(1) through (a)(5), have a reasonable basis for believing that the information is true and correct in relation to the day that the quotation is submitted, and have a reasonable basis for believing that the information was obtained from sources that are reliable. The broker-dealer would satisfy this standard if, after reviewing the information in a professional manner, and appropriately examining any "red flags," the broker-dealer had a reasonable basis to believe that the information was true and correct, and had a reasonable basis for believing that the source was reliable.

The "reasonable belief" standard in paragraph (a) as proposed to be amended would require a broker-dealer to have "a reasonable basis for

believing (that the Rule 15c2-11 information) is true and correct." The Commission proposes to discontinue using the phrase in current paragraph (a)(5) which requires that a broker-dealer have "no reasonable basis for believing that (the Rule 15c2-11 information) is not true and correct." The Commission believes that the "double negative" language of paragraph (a)(5) is susceptible of varying interpretation, especially when compared with the reasonable belief standard regarding the sources of the information in current paragraph (a)(5), which requires that the broker-dealer have "a reasonable basis for believing (that the sources) are reliable." The proposed amendment would use the same reasonable belief standard throughout the Rule. The change in language is intended to clarify the parallelism between the responsibilities of broker-dealers under the Rule, after reviewing the Rule 15c2-11 information in a professional manner to conduct whatever inquiry with respect to the information and with respect to the sources of the information that is required under the circumstances. The proposed language also would apply to the representation implied by current paragraph (a)(5) when a broker-dealer makes available information upon request as required by that paragraph. By providing the information, the broker-dealer would be representing, *inter alia*, that the broker-dealer has a reasonable basis for believing that the information is true and correct.

The proposed addition of the phrase "in relation to the day that the quotation is submitted" ⁵⁵ is intended to clarify that a broker-dealer must satisfy the requirement to have "a reasonable basis for believing (that the information required by paragraphs (a)(1) through (a)(5)) is true and correct" on the basis of the information required by paragraphs (a)(1) through (a)(5) and any other information relating to the issuer in the broker-dealer's knowledge or possession at the time that the quotation is submitted.⁵⁶ This means, for example, that a broker-dealer would not satisfy the Rule's requirements if it technically had the information called for by paragraphs (a)(1) through (a)(5) but turned a blind eye to additional, and particularly more current, adverse

information in the broker-dealer's knowledge or possession.⁵⁷

In addition to determining whether there is a reasonable basis for believing that the required information is true and correct, a review of the information may alert the broker-dealer to possible fraudulent or manipulation schemes that may be taking place and that might be facilitated by the publication of quotations.⁵⁸ The Commission also preliminarily believes that the enhanced review requirement would benefit the Commission's enforcement efforts. For example, broker-dealers would be precluded from asserting that they were not aware that the information in their files revealed that the issuer whose securities they were quoting was a "shell corporation."⁵⁹

B. New Paragraph (a)(6)

Currently, if a broker-dealer has not received notice of a trading suspension regarding the securities of an issuer, it may claim to have reasonably relied on available information (often supplied by the issuer or a promoter) when initiating or resuming a quotation. Even brokers or dealers that are aware of the trading suspension may be unaware of the specific basis for the suspension unless they had obtained, or received, a copy of the Commission's trading suspension order.⁶⁰ To fill this significant informational gap, the Commission proposes that paragraph (a)(6) be added to the Rule to require a broker-dealer proposing to initiate or resume a quotation following a trading suspension to have in its records a copy of any trading suspension order issued by the Commission during the preceding 12 month period, or a copy of the public

⁵⁷ The Commission requests comment on whether it would be preferable to combine the information maintenance and review requirements of revised paragraph (a) and current paragraph (c) into one provision, and whether new paragraph (h), *see* section II.C. *infra*, could be incorporated feasibly into such a provision.

⁵⁸ *See* n.12 *supra* and accompanying text.

⁵⁹ *See* Securities Exchange Act Release No. 21914 (April 1, 1985), 50 FR 14111, 14112 (discussing the evidentiary benefit of the Rule).

⁶⁰ It is not necessary that a broker-dealer actually see a copy of the suspension order for it to be relevant to the submission of quotations by the broker-dealer. Paragraph (c) of the Rule, 17 CFR 240.15c2-11(c), requires the broker-dealer to maintain in writing in its records information regarding the issuer, including adverse information, "which comes to his knowledge or possession" (emphasis supplied) before submission or publication of the quotation.

When a trading suspension is ordered for a security, it is the Commission staff's practice to advise market makers of the existence of the suspension. Generally, telephone calls are made to these broker-dealers listed on the pink sheets for the subject security, and they are provided with information about the trading suspension.

⁵³ Release 34-21470, 49 FR at 45118.

⁵⁴ *See* Bunker Securities Corporation, 48 S.E.C. 859, 865 (1987).

⁵⁵ The phrase presently appears in paragraph (a)(5) in qualifying the term "reasonably current" for purposes of that paragraph. *See also* paragraph (g), 17 CFR 240.15c2-11(g).

⁵⁶ Paragraph (c) of the Rule, 17 CFR 240.15c2-11(c), already requires that such other information be maintained in the broker-dealer's files.

release issued by the Commission announcing that trading suspension.⁶¹ These documents would inform the broker-dealer of the basis for the trading suspension. Because pink sheet issuers sometimes change their names, in many cases to conceal prior difficulties, proposed paragraph (a)(6) would require a broker-dealer to obtain a copy of a trading suspension order issued with respect to the securities of the issuer and any predecessor issuer during the preceding 12 months.⁶² The proposed amendment would enhance investor protection because the broker or dealer will have notice of recent questions raised by the Commission regarding the securities of an issuer (including any predecessors) that should be considered in initiating or resuming a quotation.⁶³

Because announcements of trading suspensions are issued as Exchange Act releases and published in the SEC Docket, information regarding trading suspensions is readily available from the Commission and from other sources. In addition, the Commission is developing a supplemental service to provide broker-dealers and others with information about trading suspensions. This new service will provide inquiring persons with information by telephone of all trading suspensions ordered within the month preceding the date of the call, and a written list by mail of all trading suspensions within the prior year. It is contemplated that the Exchange Act release relating to each suspension also will be available.

Therefore, the collection and maintenance burden on broker-dealers should be minimal. The Commission, however, asks commentators to address whether any difficulties are presented in obtaining this information and whether the period specified, *i.e.*, suspension orders issued during the preceding 12 months, is appropriate.

C. New Paragraph (h)

Paragraph (a) of the Rule (currently and as proposed to be amended) requires a broker or dealer to obtain specified information concerning the issuer and its securities before

submitting quotations to a quotation medium for publication.⁶⁴ A trading suspension in the securities of an issuer should alert a broker-dealer that the information about the issuer in its possession, such as the information included in a prior effective registration statement or annual report, may no longer be true or correct,⁶⁵ and a broker-dealer should not assume that it can rely on those documents. While the issuance of a trading suspension order constitutes no finding or adjudication by the Commission that the available information regarding the issuer is false, misleading, or noncurrent, the Commission's determination that the protection of the public interest required it to exercise its extraordinary trading suspension authority should cause each broker-dealer to scrutinize carefully the information upon which it proposes to publish quotations.

The Commission particularly is concerned that some market makers are not presently meeting their obligations under the Rule after a trading suspension. Accordingly, the Commission proposes to amend Rule 15c-11 by adding a new paragraph (h)⁶⁶ providing that, if a trading suspension has been ordered during the preceding 12 months, the broker or dealer could not submit a quotation on the basis of having the documents referred to in subparagraphs (a)(1) through (a)(5), unless the broker-dealer had reviewed the documents required by those subparagraphs in light of the information contained in the trading suspension order, and had a reasonable basis to believe that the information in its possession was true and correct and was obtained from reliable sources.

In essence, paragraph (h) would require a determination by the broker-dealer that, taking into account the "red flag" of the trading suspension, the broker-dealer had a reasonable basis for believing that the information in its possession or knowledge concerning the issuer is true and correct in relation to the day that the quotation is submitted,⁶⁷ and was obtained from reliable sources. As discussed in Section I.A. above, the extent of the inquiry of the facts and circumstances that would form the basis for a "reasonable belief" will vary with the circumstances.

D. Amendments to Paragraph (a)(3)

a. Expansion of Scope

Under paragraph (a)(3)(iii), a broker or dealer submitting quotations for a security of an issuer required to file reports under sections 13 or 15(d) of the Exchange Act ("reporting issuer") must have in its records the issuer's most recent annual report⁶⁸ together with any other report required to be filed at regular intervals thereafter, *i.e.*, quarterly reports on Form 10-Q under the Exchange Act.⁶⁹ An issuer may be subject to the Exchange Act reporting requirements because it issued securities pursuant to an effective registration statement under the Securities Act;⁷⁰ has a class of equity security held of record by 500 or more shareholders and has \$5 million or more in total assets;⁷¹ or voluntarily registered its securities under Section 12 of the Exchange Act to become a reporting issuer.⁷² In each of these situations, the issuer will have filed a disclosure document with the Commission that is subject to the liability provisions of the securities laws.⁷³

Even though these filings provide substantial information concerning the issuer and its securities,⁷⁴ and subject the issuer to a continuous reporting obligation,⁷⁵ a broker-dealer seeking to publish quotations cannot comply with the terms of paragraph (a)(3) until the issuer files its first annual report. Prior to the time that an issuer files its first annual report, therefore, a broker-dealer would generally look to the informational requirements of paragraph (a)(5) of the Rule. However, if more formal documents, such as a Securities Act registration statement, are

⁶¹ See 17 CFR 249.310.

⁶² See 17 CFR 249.308a.

⁶³ See section 15(d) of the Exchange Act, 15 U.S.C. 78o(d).

⁶⁴ See section 12(g) of the Exchange Act, 15 U.S.C. 78l(g), and Rule 12g-1 thereunder, 17 CFR 240.12g-1.

⁶⁵ See, e.g., 17 CFR 249.210, 249.218, 249.220f.

⁶⁶ See sections 11, 12, and 17(a) of the Securities Act, 15 U.S.C. 77k, 77l, and 77(q)(a), and Sections 10(b) and 18 of the Exchange Act, 15 U.S.C. 78j(b) and 78r, and Rule 10b-5 thereunder, 17 CFR 240.10b-5. False or misleading statements in filed documents may result in Commission enforcement actions under Securities Act section 20(b), 15 U.S.C. 77t(b), or Exchange Act section 21(d), 15 U.S.C. 78u(d), and criminal prosecution under Securities Act section 24, 15 U.S.C. 77x, or Exchange Act section 32, 15 U.S.C. 78cc.

⁶⁷ See, e.g., section 7 and Schedule A of the Securities Act, 15 U.S.C. 77g and 17 CFR 230.251 *et seq.* (registration statements); Form 10 under the Exchange Act, 17 CFR 249.210 (registration under section 12(g) of the Exchange Act).

⁶⁸ Sections 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78m(a) and 78o(d), respectively.

⁶¹ The Commission's order imposing a trading suspension sets forth the basis for, and the time period of, the suspension. The release published in the SEC Docket incorporates the information in the order, and contains cautionary language addressed to broker-dealers regarding compliance with Rule 15c-11. See n.44 *supra*.

⁶² Item (1) of paragraph (a)(5) of the Rule requires brokers or dealers relying on the informational requirements of paragraph (5) to obtain "the exact name of the issuer and its predecessor (if any)" (emphasis supplied.)

⁶³ Proposed new paragraph (h) would complement proposed paragraph (a)(6); see section II.C. *infra*.

⁶⁴ See nn.23-35 *supra* and accompanying text.

⁶⁵ See discussion in Section I.C. *supra*.

⁶⁶ Current paragraph (h) would be redesignated as paragraph (i).

⁶⁷ See text accompanying nn.55-57 *supra*.

available, these documents would seemingly provide better information.⁷⁶

Therefore, the Commission proposes to amend paragraph (a)(3) to provide that, if a reporting issuer has not filed its first annual report, the broker-dealer may satisfy paragraph (a)(3) by having in its records the document that caused the issuer to become a reporting company, e.g., the registration statement⁷⁷ or the Form 10, which was filed and became effective, together with any subsequent reports filed by the issuer. The proposed amendment to paragraph (a)(3) to allow these public documents to satisfy the information maintenance requirements in this limited context furthers the Rule's purpose by requiring that broker-dealers have the most accurate and current information available when submitting quotations. In these circumstances, the broker-dealer would be unable to rely on paragraph (a)(5), which is unavailable to the broker-dealer after a report has been filed with the Commission.⁷⁸

2. Current Reports

Paragraph (a)(3) requires broker-dealers to have not only copies of the issuer's most recent annual report, but also any other reports required to be filed at regular intervals, i.e., quarterly reports on Form 10-Q. The Commission proposes to further amend the paragraph to require broker-dealers also to obtain any current reports on Form 8-K⁷⁹ filed by the issuer between the time that the issuer filed its most recent annual report (or the time that the issuer became a reporting company in the situation where the issuer has not filed its first annual report) and the date on which the broker-dealer submits the

information to the quotation medium to initiate or resume a quotation. The Commission is proposing this amendment because the events triggering the Form 8-K filing requirements involve material events which may be important to a broker-dealer establishing a quotation for a security covered by the Rule.⁸⁰ For example, when a newly-formed or an existing shell corporation subject to Exchange Act reporting requirements acquires a nonpublic corporation involving a significant amount of assets, Item 2 of Form 8-K requires comprehensive disclosure about the acquisition,⁸¹ and Item 7 requires financial statements and pro forma financial information. By requiring broker-dealers to obtain Form 8-K reports before they initiate or resume quotations for such securities,⁸² they will have the most current available information about material events relating to the issuer.

The Commission recognizes that it may not be possible for a broker-dealer to ascertain contemporaneously whether an issuer has filed reports with the Commission, obtain copies of all filed reports, and submit a quotation to a quotation medium. Therefore, the Commission believes that a broker-dealer would be deemed to be in compliance with paragraph (a)(3) if the broker-dealer obtains all Forms 8-K and other Exchange Act reports filed with

the Commission as of a date reasonably in advance of the date that the broker-dealer submits the quotation to the quotation medium.⁸³ Although the broker-dealer would have no affirmative obligation to ascertain whether a report had been filed during this period and until the quotation is published, paragraph (c) of the Rule requires the broker-dealer to maintain in its records any information regarding the issuer which comes into its knowledge or possession before the publication of the quotation. Accordingly, if the broker-dealer receives or is apprised of information contained in a report filed by the issuer during this period, that information must be included in the broker-dealer's Rule 15c2-11 file.

Because this proposal would increase recordkeeping burdens for broker-dealers,⁸⁴ the Commission solicits comment on the costs and benefits of requiring broker-dealers to obtain this information, and any other comments that may be helpful to the information, and any other comments that may be helpful to the Commission in assessing whether this proposed amendment is necessary or appropriate.

E. Amendments to Paragraphs (c) and (d)

1. Paragraph (c)

Paragraph (c) provides that a broker-dealer must maintain as part of its records the information (including adverse information) regarding the issuer that comes to his knowledge or possession before publication or submission of the quotation, and preserve such records "for the periods specified in Rule 17a-4" under the Exchange Act.⁸⁵ Rule 17a-4, however, specifies different time periods for the retention of specific categories of books and records, ranging from three years to an indefinite period.⁸⁶ None of the paragraphs in Rule 17a-4 refers specifically to the information required to be maintained by Rule 15c2-11(c). Accordingly, the Rule 15c2-11(c) requirement is ambiguous on the length of time that the information must be preserved.

⁸³ The Commission believes that a period of up to five business days is reasonable.

⁸⁴ For the fiscal years 1988, 1987 and 1986, the number of Form 8-Ks filed with the Commission was approximately 12,925, 12,570 and 11,850, respectively. These figures represent an average of one Form 8-K per reporting company per year.

⁸⁵ 17 CFR 240.17a-4. Rule 17a-4 is the general provision relating to the preservation of books and records by exchange members, brokers, and dealers.

⁸⁶ See paragraphs (a)-(e), 17 CFR 240.17a-4(a)-(e).

⁷⁶ [I]n the case of reporting companies, which are subject to a Congressionally-mandated system of continuous disclosure, a broker-dealer ought to have in its possession certain comprehensive [information] in order to submit or publish a quotation. Only when the paragraph (a)(3) information is not reasonably available may a broker-dealer substitute the information required by paragraph (a)(5).

Released 34-21470, 49 FR at 45122. Documents that are filed with the Commission are "reasonably available." See n.33 *supra*.

⁷⁷ Paragraph (a)(1) of the Rule permits a broker-dealer to initiate or resume quotations based on a registration statement that became effective less than 90 days before the publication or submission of the quotation. Under the proposed amendment to paragraph (a)(3), the broker-dealer could enter quotations based on the registration statement during the period between 90 days after effectiveness of the registration statement and the filing of the first annual report.

⁷⁸ See n.33 *supra*. The broker-dealer also must have a reasonable basis for believing that the issuer is current in filing its reports. 17 CFR 240.15c2-11(a)(3)(ii).

⁷⁹ See 17 CFR 240.308.

⁸⁰ For example, a report on Form 8-K must be filed upon the occurrence of a change in control (Item 1), acquisition or disposition of assets (Item 2), bankruptcy or receivership (Item 3), and resignations of directors (Item 6). A reporting issuer also voluntarily may file a Form 8-K to report other events that the issuer "deems of importance to security holders" (Item 5).

⁸¹ Item 2 requires, *inter alia*, a description of the assets acquired, the nature and amount of consideration paid, the identity of the persons from whom the assets were acquired, the relationship between such persons and the issuer, and the source of funds used.

⁸² The Commission's Public Reference Room in Washington, DC can advise a broker-dealer whether an issuer has filed a report under the Exchange Act. There are three principal means for a broker-dealer to obtain reports filed with the Commission by an issuer: from the issuer itself; from one of the user organizations that reproduce and distribute reports filed with the Commission; or from the Commission's Public Reference Room. Market makers frequently are on an issuer's mailing list and regularly receive copies of issuer filings. User organizations provide copies of reports for a fee, usually within a short time from the date of a telephone or written request. The Public Reference Room will provide copies for a fee in response to written requests (the response time can be significantly longer than that of the user organizations). The development of a fully operational electronic filing and processing system (i.e., EDGAR) for various types of issuer filings should facilitate rapid access by broker-dealers to the kinds of information specified in paragraph (a)(3).

The Commission believes that requiring the retention of Rule 15c2-11 information for the time periods specified in Rule 17a-4(b), namely, for a three-year period, the first two in an easily accessible place, would be appropriate for purposes of examinations and investigations by the Commission and self-regulatory organizations. The Commission also recognizes that burdens and storage costs are imposed on broker-dealers by this requirement. Therefore, the Commission proposes that paragraph (c) of Rule 15c2-11 indicate that the broker-dealer preserve the information for the periods specified in Rule 17a-4(b).

2. Paragraph (d)

Paragraph (d) of the Rule requires a broker-dealer submitting quotations for publication to furnish to the interdealer quotation system, in such form as such system shall prescribe and at least two days before the quotation is to be published, the information regarding the security and its issuer that the broker-dealer is required to maintain pursuant to paragraph (a)(5). The Commission is proposing to amend paragraph (d) to expand the period between the time that information is furnished to the interdealer quotation system and the time that the quotation may be published. The Commission proposes to amend paragraph (d) to require broker-dealers to submit the information to the interdealer quotation system at least three business days before publication of the quotation. This modification is proposed to afford the interdealer quotation system and regulations sufficient time to obtain and review, in advance of publication of quotations, the information furnished by broker-dealers pursuant to paragraph (d).⁸⁷

F. Amendment to Paragraph (f)(5)

Paragraph (f)(5) provides an exception to the informational requirements of the Rule for "[t]he publication or submission of a quotation respecting a security that is authorized for quotation in an interdealer quotation system sponsored and governed by the rules of a registered securities association * * *." This paragraph is intended to except from the Rule quotations for securities authorized for inclusion in NASDAQ.⁸⁸

⁸⁷ The Commission notes that it is the NQB's practice to hold an application for publication of a quotation on NQB Form 211 for three business days after receipt. Thus, the amendment should have no significant impact on broker-dealers in the vast majority of cases.

⁸⁸ The Commission in adopting paragraph (f)(5) stated that "an exception from the Rule has been established for the publication of quotations for securities authorized to be quoted in the NASDAQ

The Commission considered it appropriate to except quotations for NASDAQ securities because the NASD imposes qualification standards regarding the security and the issuer that seeks authorization for inclusion of that security in NASDAQ. These qualification standards require that a security be subject to regular and continuous two-way priced quotations by at least two market makers; a minimum number of shares of the security be held by a minimum number of public shareholders; the issuer meet minimum asset as well as capital and surplus requirements; and the issuer comply with certain continuous disclosure obligations.⁸⁹ The Commission believed that these qualification standards promoted the public availability of information about the security and its issuer and helped to inhibit quotations for shell corporations.⁹⁰

The NASD has filed with the Commission a proposal to establish the "OTC Bulletin Board Display Service" ("OTC Service") which, if implemented, would constitute an electronic alternative to the National Daily Quotation Service.⁹¹ The OTC Service, however, will be very different from NASDAQ. Quotations need not be priced and may be one-sided. There will be no minimum qualifications standards or disclosure obligations imposed on an issuer as prerequisites for inclusion of quotations for its securities in the Service. Accordingly, the Commission does not believe that the OTC Service is comprehended by the present paragraph (f)(5) exception.

In order to provide notice to broker-dealers of the scope of the exception in paragraph (f)(5), the Commission proposes to amend paragraph (f)(5) to clarify that the exception is applicable only to the publication or submission of a quotation authorized for quotation in NASDAQ.⁹²

III. Request for Comments Concerning the "Piggyback" Provision

The piggyback provision is contained in paragraph (f)(3) of the Rule which permits a broker-dealer to publish quotations for a security without having

any information about the security's issuer, if the security has been quoted in an interdealer quotation system with the frequency specified in the Rule.⁹³ The Commission is concerned that permitting broker-dealers to piggyback on existing quotations for a security may be undermining, and may be inconsistent with,⁹⁴ the fundamental goal of the Rule to assure that a broker-dealer has adequate information about an issuer before submitting a quotation.

The Commission is requesting comment on whether the piggyback provision should be eliminated to the extent that it allows broker-dealers to enter quotations without having the information specified by the Rule. As noted above,⁹⁵ the piggyback provision is based upon a presumption that the quotation of a security subject to regular and frequent two-sided market making will reflect independent supply and demand forces. The deeper premise of this presumption appears to be that trading solely on the basis of perceived supply and demand forces, without having information about the issuer, is an appropriate market making function. In discussing this trading "by the numbers," the Commission has stated that

when * * * a dealer [has] no basis on which those numbers could be related to the security's investment value, careful scrutiny of all surrounding circumstances with a view to detecting any sign of possible manipulation [is] called for.⁹⁶

When the Rule was adopted, it covered a broad spectrum of over-the-counter securities, including widely-followed stocks subject to two-way priced quotations by several market makers. In that context, trading activity (i.e., supply and demand forces) could be gauged from such quotations. Today, the Rule applies principally to the pink sheet market, predominantly consisting of infrequently-traded securities with unpriced entries and few market makers. In 1984, the Rule was amended to bring unpriced ("name-only") entries by broker-dealers within its coverage.⁹⁷

⁸⁹ See text at nn. 36-40 *supra*.

⁹⁰ At least one commentator has observed that the piggyback provision appears to be "antithetical" to the informational requirements of the Rule. Letter from Blinder, Robinson & Co., Inc. to John Wheeler, Secretary, SEC, dated June 14, 1985, included in File No. S7-14-85. However, some of the comment letters in File No. S7-14-85 indicated that the piggyback provision was important in reducing the compliance burden of the Rule. See, e.g., letter from William R. Harman, Chairman, Federal Regulation Committee, Securities Industry Association, to John R. Wheeler, III, Secretary, SEC (June 10, 1985), included in File No. S7-14-85.

⁹¹ See text accompanying n. 40 *supra*.

⁹² Alessandrini, *supra* n. 9, 45 S.E.C. at 405.

⁹³ See Release 34-21470.

system * * *." See Release 34-21470, 49 FR at 45119.

⁸⁹ See NASD By-laws, Schedule D, Part II, Section 1. NASD Manual (CCH) ¶ 1803.

⁹⁰ Release No. 34-21470, 49 FR at 45118-45119.

⁹¹ See n.2 *supra*.

⁹² If NASDAQ authorization for a security is suspended, terminated or prohibited, but the security remains eligible for quotation in another interdealer quotation system, a broker or dealer will be required to have in its records the information required by the Rule in order to publish a quotation in that other system.

The Commission questions whether retention of the piggyback provision continues to be appropriate in light of developments in the over-the-counter marketplace and changes to the Rule since its adoption. The Commission is concerned, moreover, that the piggyback provision can result in pink sheet market makers unwittingly facilitating fraudulent schemes in that their quotations add credibility to the illusion of a legitimate market for the securities involved in the fraud. The Commission therefore seeks comment on whether market making in a pink sheet security by a broker-dealer whose quotations are submitted pursuant to the piggyback provision of the Rule is appropriate.

The Commission preliminarily believes that extending the Rule's information gathering requirements to all participating market makers might increase the efficient valuation of low-priced, speculative offerings, and increase the likelihood that sham issuers will be quickly exposed.⁹⁸ The Commission also notes that, at least for firms engaged in a retail business, the elimination of the piggyback exception should impose no new burdens. Because these firms must have a reasonable basis for any recommendations to customers, they have an obligation to be familiar with material information about issuers of any recommended security for which they also make markets.⁹⁹

Another aspect of the piggyback provision is the difficulty that broker-dealers may have in determining whether the conditions of its availability have been satisfied.¹⁰⁰ Because the pink sheets are disseminated in paper format, this requires the broker-dealer to have available and review a month's collection of pink sheet quotations before initiating or resuming a quotation. As a result, the Commission understands that some market makers ignore the piggyback provision and maintain or obtain the required information about the issuer in all cases.

Finally, the Commission is concerned about difficulties in addressing noncompliance with the piggyback provision.¹⁰¹ Because the NQB is not an SRO, it does not have the affirmative obligation that an SRO would have to determine whether broker-dealers are complying with the piggyback provision when entering quotations, nor does the NQB have the statutory authority of an SRO to enforce the provisions of the Rule.¹⁰²

Therefore, the Commission seeks responses to the following questions:

A. Are there investor protection concerns when a broker-dealer publishes quotations for a security solely on the basis of perceived supply and demand forces and the broker-dealer has no information about the issuer? Is the response different if the

issuer is a reporting issuer under the Exchange Act?

B. Should the piggyback provision be retained:

1. In its current formulation?
2. In a different formulation, e.g., a requirement that there must have been quotations for every trading day during the preceding 30 calendar day period?
3. Only for certain (e.g., reporting) issuers?
4. At all?

C. Does the response to Question B change if there are efficient methods of surveillance and enforcement of the piggyback provision (e.g., an interdealer quotation system facility that would preclude the publication of piggyback quotations where the terms of the piggyback exception have not been satisfied)? Should the availability of the piggyback exception be limited to interdealer quotation systems with such a facility?

D. Should the Commission revise (and, if so, how) or eliminate the present ability of a market maker that had satisfied the Rule's informational requirements to continue to submit quotations indefinitely¹⁰³ without any requirement to obtain additional information (i.e., "self-piggybacking"). In effect, the revision or elimination of the ability to self-piggyback would require every market maker to update its issuer information,¹⁰⁴ and to include in its files any information that came to the market maker's knowledge or possession between those updates.¹⁰⁵ Would there be situations (e.g., issuer bankruptcy) that would have to be specifically addressed in the Rule if self-piggybacking were eliminated?

E. The NASD and other commentators have suggested that a central, electronic repository of Rule 15c2-11 information would be a more efficient means of assembling and retrieving information.¹⁰⁶ Would the response to Question B change if there were a central repository for issuer information accessible to broker-dealers and the

⁹⁸ In responding to the Commission's requests for comments on proposed Rule 15c2-6 under the Exchange Act, see Securities Exchange Act Release No. 26529 (February 8, 1989), 54 FR 6693, a number of commentators have implied that broker-dealers that publish quotations for pink sheet securities without having information about the issuer may be contributing to the "penny stock fraud" phenomenon. These commentators suggested that the Commission consider eliminating the piggyback exception, thereby requiring all market makers to have issuer information when they submit quotations for an issuer's securities. See, e.g., letter from American Bar Association, Section of Business Law, Committee on Federal Regulation of Securities, Subcommittee on Broker-Dealer Matters, to Jonathan G. Katz, Secretary, SEC (April 25, 1989); letter from Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, Inc. (June 15, 1989). Other commentators on proposed Rule 15c2-6 similarly pointed to the lack of issuer information available to potential investors in pink sheet securities. These commentators suggested that Rule 15c2-11 type information should be available to prospective investors, and the information could be supplied by broker-dealers that recommend the purchase of such securities. See, e.g., letter from Lowry & Chernis, P.C., to SEC, Division of Market Regulation (May 11, 1989); letter from Malone & Associates, Inc., to Jonathan G. Katz, Secretary, SEC (March 29, 1989). These comment letters are contained in File S7-3-89 in the Commission's Public Reference Room.

⁹⁹ See, e.g., letter from Sutro & Co. Incorporated to John Wheeler, Secretary, SEC (June 7, 1985), included in File No. S7-14-85; letter from Blinder Robinson & Co., Inc. to John Wheeler, Secretary,

SEC (June 4, 1985), included in File No. S7-14-85. See also text accompanying n. 41 *supra*.

¹⁰⁰ The security must have been the subject of quotations (at specified prices in certain contexts under Rule 15c2-11(f)(3)(ii)) for the preceding 30 calendar days, and during that 30 day period there must have been quotations on at least 12 business days with no more than a 4 business day hiatus between quotations. See text at nn. 36-39 *supra*.

¹⁰¹ The Commission's concern in this area is longstanding, see Release 34-19673, 48 FR at 17114, and has grown as a result of the increase in pink sheet manipulation cases and trading suspensions.

¹⁰² As the Commission has noted, because of certain procedures employed by the NQB, broker-dealers have been able to enter quotations in the pink sheets for a security in purported reliance on the piggyback provision during the 30 days after the initial publication of a quotation for the same security. See Release No. 34-19673, 48 FR at 17114. In that release, the Commission also stated that permitting broker-dealers to submit quotations without complying strictly with the piggyback provision after a trading suspension was of particular concern. *Id.* During recent conversations with the staff of the NQB, the Division of Market Regulation was informed that the NQB now has developed procedures that prevent a broker-dealer from submitting a quotation for at least 30 days following an initial quotation unless the broker-dealer supplies a Form 211.

This situation also will change to some extent if the NASD's OTC Service becomes operational. See n.2 *supra*. As an SRO, the NASD has the obligation to enforce compliance with the provisions of the Rule. If the OTC Service is implemented, the NASD presumably will monitor the quotations for compliance with the Rule 15c2-11 and take appropriate action if broker-dealers fail to comply.

¹⁰³ The market maker's quotations must be continuous within the parameters of the Rule. Therefore, where a break in the market maker's quotation of more than four consecutive business days occurred, the market maker would be required to obtain the information required by the Rule prior to resuming quotations following the hiatus. Cf. Rule 15c2-11(f)(3)(iii), 17 CFR 240.15c2-11(f)(3)(iii).

¹⁰⁴ See paragraph (g) of the Rule, 17 CFR 240.15c2-11(g). With respect to reporting to issuers, broker-dealers would have to update their files periodically.

¹⁰⁵ See paragraph (c) of the Rule, 17 CFR 240.15c2-11(c).

¹⁰⁶ See, e.g., letter from the NASD to John Wheeler, Secretary, SEC, dated December 16, 1985 included in File S7-14-85. To date, however, such a repository has not been proposed or implemented.

public? What would be the costs and benefits of such a repository?

F. What are the costs imposed on market makers by eliminating or reformulating the piggyback exception?¹⁰⁷

IV. Solicitation of Comment

All interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should submit three copies thereof to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, no later than December 1, 1989.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed amendments to Rule 15c2-11. The IRFA indicates that one of the reasons for requiring a broker-dealer to review the Rule 15c2-11 information in its records prior to initiating or resuming quotations is to help alert it to possible fraudulent or manipulative schemes that may be taking place and that may be facilitated by the publication of quotations. The IRFA also states that the proposals requiring a broker-dealer to obtain a copy of a trading suspension order (or Exchange Act release announcing such order) for any security that has been the subject of such order within the preceding 12 months, and to review the documents referenced in paragraphs (a)(1) through (a)(5) in the light of that order, are designed to guard against the initiation or resumption of quotations based on stale or unreliable information. The IRFA also recognizes that having current 8-K reports of reporting companies will benefit the over-the-counter market, especially regarding the trading of the securities sold in offerings involving shell corporations.

The IRFA notes that, while in many instances the proposed amendments would codify current market practices, in some cases additional burdens may be placed on broker-dealers and issuers. The Commission specifically seeks comments on the costs associated with these additional requirements.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Michael T. Dorsey, Division of Market Regulation, Securities and

Exchange Commission, Washington, DC 20549, (202) 272-2848.

VI. Effects on Competition

Section 23(a)(2) of the Exchange Act¹⁰⁸ requires the Commission, in adopting rules under the Exchange Act, to consider any anticompetitive effects of such rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Exchange Act. The Commission views, preliminarily, the proposed amendments to Rule 15c2-11 as causing no burden on competition unnecessary or inappropriate in furtherance of the purposes of the Exchange Act. The Commission, however, requests comment on any competitive burdens that might result from adoption of the proposed amendments described in this release.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Statutory Basis and Text of Proposed Rule Amendments

The Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 910, as amended, 15 U.S.C. 78w * * * § 240.15c2-11 also issued under secs. 3, 10(b), 15(c), 17(a), and 23(a); 15 U.S.C. 78c, 78j(b), 78o(c), 78q(a), and 78w(a).

2. By amending § 240.15c2-11 by revising paragraphs (a) (1)-(4), introductory text of (a)(5), the first sentence after (a)(5)(xvi), (d), and (f)(5); redesignating paragraph (h) as (i); adding new paragraphs (a)(6) and (h); and amending paragraph (c) by changing "§ 240.17a-4" to "§ 240.17a-4(b);" as follows:

§ 240.15c2-11 Initiation or resumption of quotations without specific information.

(a) It shall be a fraudulent, manipulative, and deceptive practice within the meaning of section 15(c)(2) of the Act, for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this section) unless such broker or dealer

has in its records the following documents or information which the broker or dealer has reviewed and has a reasonable basis for believing is true and correct in relation to the day that the quotation is submitted, and which was obtained by the broker or dealer from sources which the broker or dealer has a reasonable basis for believing are reliable.

(1) A copy of the prospectus specified by section 10(a) of the Securities Act of 1933 for an issuer that has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F-6, which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided*, That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted; or

(2) A copy of the offering circular provided for under Regulation A under the Securities Act of 1933 for an issuer that has filed a notification under Registration A which became effective less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided*, That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which is still in effect when the quotation is published or submitted; or

(3) A copy of the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act or a copy of the annual statement referred to in section 12(g)(2)(G)(i) of the Act, in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act or an issuer of a security covered by section 12(g)(2)(B) or (G) of the Act, together with any quarterly and current reports that have been filed under the provisions of the Act by the issuer after such annual report or annual statement; *Provided, however*, That until such issuer has filed its first annual report pursuant to section 13 or 15(d) of the Act or annual statement referred to in section 12(g)(2)(G)(i) of the Act, the broker or dealer has in its records a copy of any registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F-6, that became effective within the prior 16 months or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months, together with any quarterly and current reports filed thereafter under

¹⁰⁷ The Commission has posed this question at least twice before. See Release No. 34-19673, 48 FR at 17114 and Release 34-21914, 50 FR at 14114. Responses to these inquiries have been inconclusive. See Summaries of Comments relating to those releases contained in Files S7-967 and S7-14-85 respectively.

¹⁰⁸ 15 U.S.C. 78w(a)(2).

section 13 or 15(d) of the Act; and *Further Provided*, That the broker or dealer has a reasonable basis for believing that the issuer is current in filing annual, quarterly, and current reports filed pursuant to section 13 or 15(d) of the Act, or, in the case of an insurance company exempted from section 12(g) of the Act by reason of section 12(g)(2)(G) thereof, the annual statement referred in section 12(g)(2)(G)(i) of the Act; or

(4) The information furnished to the Commission pursuant to § 240.12g3-2(b) since the beginning of the issuer's last fiscal year, in the case of an issuer exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3-2(b), which information the broker or dealer shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer; or

(5) The following information, which shall be reasonably current in relation to the day the quotation is submitted and which the broker or dealer shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer:

*** If such information is made available to others upon request pursuant to this subparagraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is true and correct, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that the broker or dealer has a reasonable basis for believing the information is true and correct, and that the information was obtained from sources which the broker or dealer has a reasonable basis for believing are reliable. ***

(6) In addition to the records required by paragraphs (a)(1) through (a)(5) of this section, the broker or dealer has in the broker's or dealer's records a copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act respecting any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation, or a copy of the public release issued by the Commission announcing such trading suspension order.

(d) For any security of an issuer included in paragraph (a)(5) of this section, the broker or dealer submitting the quotation shall furnish to the interdealer quotation system (as defined

in paragraph (e)(2) of this section), in such form as such system shall prescribe, at least 3 business days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain pursuant to said paragraph (a)(5) of this section.

(f) ***

(5) The publication or submission of a quotation respecting a security that is authorized for quotation in the NASDAQ system (as defined in Rule 11Ac1-2(a)(3) under the Act), and such authorization is not suspended, terminated, or prohibited.

(h) If any securities of the issuer or its predecessor (if any) for which a broker or dealer intends to publish or submit a quotation have been the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Act during the 12 month period preceding the publication of submission of the quotation, the broker or dealer may not rely upon the documents or information required by paragraphs (a)(1) through (a)(5) of this section unless the broker or dealer has reviewed the documents or information in light of the information contained in any such trading suspension order, and has a reasonable basis for believing that the documents or information required by paragraphs (a)(1) through (a)(5) of this section is true and correct in relation to the day that the quotation is submitted, and was obtained from sources that the broker-dealer has a reasonable basis for believing are reliable.

Dated: September 14, 1989.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22423 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Ventilation Review; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on the Agency's report of findings and

recommendations regarding belt conveyor entry ventilation in underground coal mines.

DATES: Written comments must be received on or before November 27, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 25, 1989, (54 FR 35356) MSHA announced the availability of a report of findings and recommendations regarding belt conveyor entry ventilation in underground coal mines. Belt conveyor entry ventilation and related matters addressed in the new report are subjects of MSHA's proposed ventilation standards for underground coal mines. The Agency is currently preparing the final rule and believes that public comments on these issues will be useful in drafting the final rule. The comment period was to remain open until September 25, 1989, but in response to requests from the mining community, MSHA is extending the comment period to November 27, 1989. All interested parties are encouraged to submit comments prior to this date.

Dated: September 19, 1989.

Roy L. Bernard,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-22474 Filed 9-22-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Texas regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consisted of numerous changes to the Texas regulations that were intended to improve operational efficiency and to

revise the State program to be consistent with the corresponding Federal regulations.

DATES: This withdrawal is effective September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550 Tulsa, OK 74135; Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION: By letters dated July 31, 1987 (administrative record No. TX-393), and February 1, 1988 (administrative record No. TX-404), Texas submitted to OSM a proposed amendment to its program under SMCRA. OSM published a notice in the February 17, 1988, *Federal Register* [53 FR 4646], announcing the receipt of the proposed amendment and inviting public comment on its adequacy. By letter dated January 10, 1989 (administrative record No. TX-526), Texas submitted to OSM revisions to the amendment. OSM published a notice in the February 17, 1989, *Federal Register* [54 FR 7205], reopening and extending the comment period on the revised proposed amendment.

By letter dated August 17, 1989 (administrative record No. TX-456), Texas withdrew the amendment from OSM's consideration in order to prepare a more comprehensive proposed amendment package.

Therefore, because Texas withdrew the proposed program amendment announced by OSM in the February 17, 1988, *Federal Register*, and the February 17, 1989, *Federal Register*, 30 CFR part 943 is not amended.

List of Subjects in 30 CFR Part 943:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 17, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.
[FR Doc. 89-22521 Filed 9-22-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program

(hereinafter, the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to definitions, identification of interests and compliance information, review of permit applications, conditions of permits, and Commission review of outstanding permits. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 25, 1989. If requested, a public hearing on the proposed amendment will be held on October 20, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on October 10, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430. Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463-6900.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program are in the February 27, 1980, *Federal Register* (45 FR 12998).

Subsequent actions concerning Texas's program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated September 12, 1989 (administrative record No. 457), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a May 11, 1989, letter that OSM sent in accordance with 30 CFR 732.17. The regulations that Texas proposes to amend are: Definitions, 701.008; Identification of Interest and Compliance Information, 778.116; Review of Permit Applications, 786.215; Conditions of permits, 786.221; and Commission Review of Outstanding Permits, 788.225.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., c.d.t. on October 10, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those

who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 1989.

Raymond L. Lowrie,

Assistant Director Western Field Operations.

[FR Doc. 89-22522 Filed 9-22-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

38 CFR Part 21

RIN 2900-AD81

Veterans Education; State Approving Agencies and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs, Department of Defense, and Department of Transportation.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect the Department of Veterans Affairs' (VA's) relationships with the State approving agencies (SAAs). In order to implement the new provisions of law VA has proposed a new section in 38 CFR part 21, Subpart D. In administering chapter 106, title 10, United States Code, VA will apply the provisions of that new section in the same manner that it will be applied in the administration of chapters 34 and 36, title 38, United States Code.

DATES: VA, the Department of Defense and the Department of Transportation are proposing to make the proposed amendment to § 21.7700, like the provision of law it implements, retroactively effective on May 20, 1988. Comments must be received on or before October 25, 1989. Comments will be available for public inspection until November 6, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 6, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The Veterans' Employment, Training and Counseling Amendments of 1988 (Pub. L. 100-323) contain several provisions which affect VA's relationships with the various SAAs. Previously, the law provided that no department, agency, or officer of the United States could exercise any supervision or control over a State approving agency. This provision was the foundation of VA's relationships with SAAs.

Public Law 100-323 envisions a substantially new relationship. In particular, the law requires the Secretary of Veterans Affairs to conduct, in conjunction with SAAs, an annual evaluation of each SAA on the basis of standards developed by VA with the cooperation of the SAAs and to give each SAA an opportunity to comment on its evaluation. VA must take into account the results of the annual evaluation of the SAA when negotiating the terms and conditions of a contract or agreement with the SAA. VA may now supervise functionally the providing of approval services by the SAAs. VA must cooperate with SAAs in developing and implementing, to the extent practicable, a uniform national curriculum for training new SAA employees and for the continuing training of SAA employees. VA with the SAAs will sponsor the providing of this training. Finally, VA will prescribe prototype qualification and performance standards, developed in conjunction with SAAs, for use by the SAAs in the development of individual qualification

and performance standards for SAA personnel carrying out approval duties.

In order to implement many of these new provisions of law, VA has proposed a new § 21.4155. In administering the Montgomery GI Bill—Selected Reserve, the Department intends to apply the provisions of § 21.4155 in the same manner as it is applied to the administration of the Vietnam Era GI Bill.

VA, the Department of Defense and the Department of Transportation find that good cause exists for making the amendment to § 21.7700, like the provision of law it implements, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the State approving agencies it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; and would complicate administration of these provisions of law.

VA, the Department of Defense and the Department of Transportation have determined that this proposed amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs, the Secretary of Defense, and the Secretary of Transportation have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposed regulation affects only State approving agencies. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 12, 1989.

Thomas K. Turnage,
Administrator.

Dated: July 12, 1989.

James J. Delaney II,
Principal Deputy Assistant Secretary,
Reserve Affairs.

Dated: August 18, 1989.

Garry A. Domnisie,
Chief, Reserve Personnel Systems Branch.

PART 21—[AMENDED]

In 38 CFR part 21, Vocational Rehabilitation and Education, § 21.7700 is amended by revising paragraphs (e) and (f) and the authority citation at the end of the section, and by adding paragraph (g), so the revised and added text read as follows:

§ 21.7700 State approving agencies.

* * *

(e) Section 21.4154—Report of activities,

(f) Section 21.4155—Evaluations of State approving agency performance, and

(g) Section 21.4280(h) (except in those instances described in § 21.7720).

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1770, 1771, 1772, 1774, 1774A; Pub. L. 98-525, Pub. L. 100-323)

[FR Doc. 89-22513 Filed 9-22-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 80 and 86**

[AMS-FRL-3650-2]

RIN 2060-AC00

Regulation of Fuels and Fuel Additives: Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: This notice announces the time and place for a public hearing on EPA's proposed regulation to control the levels of sulfur and aromatics in diesel fuel. This proposal was published in the Federal Register on August 24, 1989 (54 FR 35276).

DATES: The hearing is scheduled to take place on October 11, 1989. The hearing will be convened at 10:00 a.m. and will adjourn at 5:00 p.m. or such later time as may be necessary for completion of testimony.

ADDRESSES: The public hearing will be held at the EPA Motor Vehicle Emission Laboratory located at 2565 Plymouth Road in Ann Arbor, Michigan.

Materials relevant to the proposed controls are available in Public Docket No. A-86-03. This docket is located at the Environmental Protection Agency, Air Docket Section, Room M-1500, Waterside Mall (ground floor), 401 M Street, SW., Washington, DC 20460. The docket section is open for inspection weekdays between 8:00 a.m. and 3:00 p.m. A reasonable fee may be charged for providing copies of material in the docket.

FOR FURTHER INFORMATION CONTACT: Jacqueline W. McManus, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone (313) 668-4272.

SUPPLEMENTARY INFORMATION: Any person desiring to make a statement at the public hearing should, if possible, notify the contact person indicated above of such intention by October 2, 1989. When notifying the contact person of your intent to make a statement at the hearing, please provide an estimate of the time required for your presentation and specify any need for audio-visual equipment. It is suggested that sufficient copies of any written statement or material be brought to the hearing for distribution to the audience.

A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony. The record for the hearing will remain open until November 10, 1989, to allow submission of rebuttal testimony and supplementary information. Any materials submitted during this period of time should be sent to the EPA Central Docket Section at the address given above. It is also requested, but not required, that a copy of this submittal be sent directly to the contact person indicated above.

Commenters desiring to submit proprietary information should clearly distinguish such information from other comments to the greatest extent possible, and label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the EPA contact person indicated above, and not to the Public Docket, to insure that proprietary information is not inadvertently placed in the docket.

Information covered by such a proprietary claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it will be made available to the public without further notice to the commenter.

Richard D. Wilson, Director, Office of Mobile Sources, is hereby designated as the Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. A written transcript of the hearing will be taken. Anyone desiring to purchase a copy of this transcript should make arrangements individually with the court reporter recording the hearing.

Dated: September 13, 1989.

Richard D. Wilson,
Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-22576 Filed 9-22-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 89-392, RM-6766]

Radio Broadcasting Services; Clinton and Varnado, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hoffman Media of Louisiana, Inc., licensee of Station WQCK(FM), Channel 224A, Clinton, Louisiana, proposing the substitution of Channel 224C2 for Channel 224A at Clinton and the modification of its license to specify operation on the higher class channel. In addition, the proposal requires the substitution of Channel 225A for Channel 224A at Varnado, Louisiana, and modification of the license for Station WBOX-FM at Varnado. Channel 224C2 can be allotted to Clinton at the current transmitter site of Station WQCK(FM). The coordinates are 30-55-54 and 91-06-43. The proposal could provide Clinton with its first wide coverage area FM service.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554 In

addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey D. Southmayd, Esquire, Southmayd Powell & Taylor, 1764 Church Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-392, adopted August 23, 1989, and released September 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22594 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-399, RM-6807]

Radio Broadcasting Services; Columbia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Tom D. Gay, d/b/a The Radio Group, licensee of Station KCTO-FM, Channel 276A, Columbia, Louisiana, proposing the

substitution of Channel 276C3 for Channel 276A at Columbia and the modification of the station's license to specify operation on the higher class co-channel. The proposal could provide the community's first wide coverage area FM service. A site restriction of 18.5 kilometers (11.5 miles) west of the city is required. The coordinates are 32-02-00 and 92-15-00.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James J. Pophan, Esquire, 700 Camp Street, New Orleans, LA 70130 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-399, adopted August 24, 1989, and released September 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22595 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-92; RM-6660]

Radio Broadcasting Services; Bishopville, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proceeding terminated.

SUMMARY: This document dismisses a petition for rule making (54 FR 18558, May 1, 1989) filed by John P. Gillen, requesting the allotment of Channel 295A to Bishopville, Maryland. Petitioner withdrew his request for rule making and indicated he could not provide the requested information demonstrating that Bishopville meets the Commission's definition of a community for allotment purposes. With this action, this proceeding is terminated.

DATES: This proceeding is terminated September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-92, adopted August 21, 1989, and released September 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22407 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-393, RM-6825]

Radio Broadcasting Services; Espanola, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Holt

Corporation of New Mexico seeking the substitution of Channel 272C3 for Channel 272A at Espanola, New Mexico, and the modification of its license for Station KMIO(FM) to specify operation on the higher powered channel. Channel 272C3 can be allotted to Espanola in compliance with the Commission's minimum distance separation requirements and can be used at Station KMIO(FM)'s present transmitter site. The coordinates for the allotment are North Latitude 35-54-01 and West Longitude 105-53-40. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 272C3 at Espanola or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901-15th Street, NW, Suite 1100, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-393, adopted August 21, 1989, and released September 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22597 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-402, RM-6903]

Radio Broadcasting Services; Virginia City, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Denise Neubauer seeking the allotment of Channel 273C3 to Virginia City, Nevada, as the community's first local FM service. Channel 273C3 can be allotted to Virginia City with a site restriction of 19.9 kilometers (12.4 miles) northeast to avoid a short-spacing to Stations KFSM, Channel 273B, Woodland, California, and KTHO-FM, Channel 275C2, South Lake Tahoe, California.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Denise Neubauer, 1078 South Gale Road, Davison, Michigan 48423 (Petitioner) and Larry G. Fuss, P.O. Box 159, Fayetteville, Georgia 30214 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-402, adopted August 24, 1989, and released September 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800,

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl A. Kinsinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22596 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-398, RM-6819]

Radio Broadcasting Services; Spring City, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Walter E. Hooper, III, permittee of Station WAYA(FM), Channel 230A, Spring City, Tennessee, proposing the substitution of Channel 230C3 for Channel 230A at Spring City and the modification his construction permit for Station WAYA(FM) accordingly. A site restriction of 21.1 kilometers (13.1 miles) southeast of the city is required. The coordinates are 35-33-06 and 84-42-09.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy K. Brady, Esquire, P.O. Box 986, Brentwood, TN 37027-986 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-398, adopted August 23, 1989, and released September 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22598 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-400, RM-6808]

Radio Broadcasting Services; Georgetown, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Williamson County Communications, Inc., proposing the substitution of Channel 299C3 for Channel 299A at Georgetown, Texas, and the modification of its construction permit to specify Channel 299C3. Channel 299C3 can be allotted to Georgetown consistent with the Commission's minimum distance separation requirements at a site 18.9 kilometers (11.7 miles) northeast of the city, at coordinates 30-43-08 and 97-30-24.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Marilyn M. Strailman, Esquire, Jones, Waldo, Holbrook & McDonough, 2300 M Street, NW., Suite 900, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-400, adopted August 24, 1989, and released September 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22599 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-401, RM-6854]

Radio Broadcasting Services; Merrill, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Roberts Broadcasting, Inc., licensee of Station WMZK-FM, Channel 281A, Merrill, Wisconsin, proposing the substitution of Channel 2813 for Channel 281A at Merrill, and the modification of its license for Station WMZK-FM at Merrill to specify operation on the higher powered channel. The community could receive its first wide coverage area FM station. Channel 281C3 can be allotted to Merrill consistent with the Commission's minimum distance separation requirements at the station's current transmitter site. The coordinates are 45-10-45 and 89-38-20, which is 3.7 kilometers (2.3 miles) southeast of the city. Canadian concurrence must be obtained for the proposal.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Michael L. Glaser, Esquire, Joseph P. Benkert, Esquire, Gardner, Carton & Douglas, 370 17th Street, Suite 2200, Denver, Colorado 80202 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-401, adopted August 24, 1989, and released September 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22600 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-403, RM-6902]

Radio Broadcasting Services; Asbury, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Denise Neubauer seeking the allotment of Channel 277C3 to Asbury, Iowa, as its first local FM service. Channel 277C3 can be allotted to Asbury in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.9 kilometers (12.4 miles) northeast to avoid a short-spacing to Channel 277C1 at Pella, Iowa, which is reserved for Station KDMG-FM. The coordinates for Channel 277C3 at Asbury are North Latitude 42-35-04 and West Longitude 90-31-43. Petitioner is requested to furnish information showing that Asbury qualifies as a community for allotment purposes since it is not listed in the 1980 U.S. Census.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Denise Neubauer, 1078 South Gale Road, Davison, Michigan 48423 (Petitioner) and Larry G. Fuss, P.O. Box 159, Fayetteville, Georgia 30214 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-403, adopted August 24, 1989, and released September 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22593 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 89-19, Notice 2]

Intent to Prepare an Environmental Impact Statement for the Corporate Average Fuel Economy Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of intent; correction.

SUMMARY: This notice corrects a notice of intent to prepare a programmatic Environmental Impact Statement for the Corporate Average Fuel Economy program which was published in the *Federal Register* on September 12, 1989 (54 FR 37702). That notice inadvertently omitted the docket number and notice number for comments. The correct docket number is 89-19, Notice 1.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 7th St., SW., Washington, DC 20590 (202) 366-0846.

Issued September 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-22509 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 54, No. 184

Monday, September 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89-159]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Pioneer Hi-Bred International, Inc., to allow the field testing in Johnston, Iowa, of alfalfa plants genetically engineered to express a gene that provides resistance to alfalfa mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered alfalfa plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist,

Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-136-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Pioneer Hi-Bred International, Inc. of Johnston, Iowa, has submitted an application for a permit for release into the environment, to field test alfalfa plants genetically engineered to express a gene that provides resistance to alfalfa mosaic virus. The field trial will take place in Johnston, Iowa.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the alfalfa plants under the conditions described in the Pioneer Hi-Bred International, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Pioneer Hi-Bred International, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the

environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The virus coat protein gene of alfalfa mosaic virus strain 425 Madison has been inserted into an alfalfa chromosome. The expression of this gene provides resistance to alfalfa mosaic virus. In nature, genetic material contained in a chromosome of these plants is transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduced gene can spread to another plant by cross-pollination, because the genetically engineered alfalfa plants will be mowed to prevent flower formation. Thus, no pollen will be produced by any alfalfa plant in this experiment.

2. Neither the coat protein gene itself, nor its gene product, confers on alfalfa any plant pest characteristic.

3. The vector used to transfer the coat protein gene to alfalfa plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown not to be pathogenic to any susceptible plant.

4. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the coat protein gene into alfalfa plant cells. The vector agent has been chemotherapeutically eliminated and shown by *in vitro* and *in vivo* assays to be no longer associated with any regenerated alfalfa plant.

5. Horizontal movement or gene transfer of the coat protein gene is not possible. The vector acts by delivering and inserting the gene into an alfalfa chromosome (i.e., chromosomal DNA). The vector does not survive in or on any transformed plant to any other organism.

6. The size of the field test plot is small and will be located on a private research farm in a rural area which will provide good security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1)

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 19th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-22570 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-142]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Hansen Poplar Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Iowa State University to allow the field testing in Ames, Iowa, of genetically engineered Hansen poplar plants modified to express a wound-inducible chloramphenicol acetyl transferase gene which is a marker gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered Hansen poplar plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5940. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-109-03.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Iowa State University, Ames, Iowa, has submitted an application for a permit for release into the environment, to field test genetically engineered Hansen poplar plants to express a wound-inducible chloramphenicol acetyl transferase gene which is a marker gene. The field trial will take place in Ames, Iowa.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the Hansen poplar plants under the conditions described in the Iowa State University application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Iowa State University, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a wound-inducible chloramphenicol acetyl transferase has been inserted into the poplar chromosome. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination. In this field test trial, the inserted gene cannot spread to any other sexually compatible plant by cross-pollination because the trees will not be allowed to flower.

2. Neither the proteinase inhibitor II promoter or terminator signal sequences, the chloramphenicol acetyl transferase gene itself, nor the chloramphenicol acetyl transferase confer on poplar any plant pest characteristic.

3. The potato plant, from which the proteinase inhibitor II promoter and terminator signal sequences were obtained, is not a plant pest.

4. The wound-inducible chloramphenicol acetyl transferase gene does not provide the genetically engineered poplar plants with any measurable selective advantage over nongenetically engineered poplar in its ability to be disseminated or to become established in the environment.

5. Select noncoding regulatory regions derived from plant pests have been inserted into the poplar chromosome. These sequences do not confer on poplar any plant pest characteristics.

6. The vector used to transfer the wound-inducible chloramphenicol acetyl transferase gene into a poplar chromosome has been evaluated for its use in this experiment. The vector agent, the bacterium that was used to deliver the vector DNA and the wound-inducible chloramphenicol acetyl transferase gene into poplar cells, has been shown to be eliminated and no longer associated with transformed poplar.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in any plant.

8. The size of the field test trial plot is small (30 meters by 15 meters). The plot will be located on a research farm which will provide adequate security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing

the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 19th day of September 1989.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.
[FR Doc. 80-22572 filed 9-22-89; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 89-160]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (302) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340,

"Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-208-01	Monsanto Agricultural Company.....	07-27-89	Soybeans genetically engineered for glyphosate herbicide tolerance.	Puerto Rico.
89-220-01	University of California, Davis	08-08-89	Walnuts genetically engineered for marker genes....	California.

Done in Washington, DC, this 19th day of September 1989.

James W. Glosser,
Animal and Plant Health Inspection Service.
[FR Doc. 89-22573 Filed 9-22-89; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 89-157]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Cucumber Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Cornell University to allow the field testing in Ontario County, New York, of cucumber plants genetically engineered to provide resistance to cucumber mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cucumber plants will not present a risk of introduction or dissemination of a plant pest and will

not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-172-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate

the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for release into the environment of a regulated article (see 52 FR 22906).

Cornell University, Geneva, New York, has submitted an application for a permit for release into the environment, to field test cucumbers genetically engineered to provide resistance to cucumber mosaic virus. The field trial will take place in Ontario County, New York.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cucumber plants under the conditions described in the Cornell University application. APHIS concluded that the

field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Cornell University, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the viral coat protein of cucumber mosaic virus has been inserted into the cucumber chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the flowers of the cucumber plants will be removed from the plants prior to sexual maturity.

2. Neither the viral coat protein gene itself, nor its gene product, confers on cucumber any plant pest characteristic.

3. The expression of the viral coat protein gene does not provide the transformed cucumber plants with any apparent selective advantage over nontransformed cucumber in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been inserted into the cucumber chromosome. These sequences do not confer on cucumber any plant pest characteristics.

5. The vector used to transfer the plant viral genes to the cucumber plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to any susceptible plant.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

7. The field test site is small (less than 0.3 acre) and is completely surrounded by forest or fruit crops.

This environmental assessment and finding of no significant impact have been prepared in accordance with: (1)

The National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4331 *et seq.*], (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 19th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-22571 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Black Panther Helicopter Salvage EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) to implement a commercial salvage timber sale within portions of the Ukonom Creek watershed on the Ukonom Ranger District, Klamath National Forest, Siskiyou County, California.

DATE: Comments concerning the scope of the analysis must be received by October 20, 1989.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Alice R. Forbes, District Ranger, Ukonom Ranger District, P.O. Drawer 410, Orleans, CA 95556.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Penny Eckert, Timber Management Officer, Ukonom Ranger District, phone (916) 627-3291.

SUPPLEMENTARY INFORMATION: A range of alternatives for this area will be considered. One of these will be no timber harvest. Other alternatives may consider an array of resource management strategies including intensive salvage operations with resource rehabilitation projects to low intensity management with greater emphasis on other resource values.

Scoping for this project was initiated on May 17, 1989. A public meeting was held in Somes Bar, CA on June 6, 1989. At this public meeting it was requested that the public comment period be extended to June 30, 1989. Comments

were received and responded to during this time period. The level of public comment led, in part, to the decision to write this EIS.

Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision are hereby invited to participate in this additional scoping process. If comment has already been made for this project, you do not need to respond again. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

Robert Rice, Forest Supervisor, Klamath National Forest, is the responsible official.

The analysis is expected to take about 5 months.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February 1990. At that time EPA will publish a notice of availability of the DEIS in the *Federal Register*.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the *Federal Register*. It is very important that those interested in the management of this project participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court Decisions have established that reviewers of DEIS's must structure their

participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by April 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: September 14, 1989.

Robert L. Rice,
Forest Supervisor.

[FR Doc. 89-22503 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-11-M

Bureau of Reclamation Lands in Wasatch County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In anticipation of Congressional action, the United States Department of Agriculture, Forest Service, will prepare an environmental impact statement to develop management direction for lands in Wasatch County, Utah, being transferred from the U.S. Bureau of Reclamation to the Uinta National Forest. The transferred lands consist of 57,000 acres of high elevation basin and mountain lands that have been used exclusively over the past 50 years by the

Strawberry Water Users for livestock grazing.

A range of alternatives for this proposal will be considered. One of these will be non-development. Other alternatives will consider various range management systems and intensities, use combinations that enhance economic opportunities for area communities, other applicable resource managements, and improvements to future resource values and uses.

The agency invites written comments and suggestions on the scope of the analysis. The scoping process will include:

1. Identification of potential public issues, management concerns, and resource development opportunities.
2. Identification of issues to be analyzed in depth.
3. Exploration of additional alternatives.
4. Elimination of insignificant issues.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies, organizations, groups, and individuals, and the assignment of responsibilities.

In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the action so that interested and affected people are aware of how they may participate and contribute to the final decision.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency in evaluating potential impacts on threatened and endangered species habitat if any are found to exist in and adjacent to the acquired lands.

DATE: Comments concerning the scope of the analysis must be received by October 31, 1989.

The transfer of lands is expected to occur on October 1, 1989. The analysis is expected to conclude in February 1990. The draft environmental impact statement should be available for public review by April 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the *Federal Register*. It is very important that those interested in the management of the acquired lands participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the

statement or the merits of the alternatives discussed. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The final environmental impact statement is scheduled to be completed by June 1990.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to the responsible official, Don T. Nebeker, Forest Supervisor, P.O. Box 1428, 88 West 100 North, Provo, Utah, 84601. Please mark the outside of the envelope with "Reply to Strawberry Lands."

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Brent Spencer, Heber Ranger District, 125 East 100 North, P.O. Box 190, Heber City, Utah, 84032 (Phone: 801-654-0470).

SUPPLEMENTARY INFORMATION: The Uinta National Forest Land and Resource Management Plan (1984) provides Forest-wide direction for administering lands and resources within the Uinta National Forest. The proposed EIS will evaluate site specific conditions within the Strawberry Lands and how established Forest Plan management direction applies to them. Applicable Forest Plan standards and guidelines and management direction will be used as a frame-work for development of a range of alternatives for site specific management direction for the soon to be acquired management area. Upon completion of the analysis and NEPA processes, the selected alternative will be used to manage the acquired 57,000 acre study area and amend the existing Forest Plan.

Dated: September 19, 1989.

Don T. Nebeker,

Forest Supervisor.

[FR Doc. 89-22524 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Massachusetts Advisory Committee to the United States Commission on Civil Rights Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:00 p.m., on Thursday, October 12, 1989, in Conference Room 505 of the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts. The purpose of the meeting is to release Stemming Violence and Intimidation Through the Massachusetts Civil Rights Act and to plan activities for Fiscal Year '90 including a forum on campus tensions and on the recruitment and retention of minorities in higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Dorothy S. Jones (617/498-9238) or John I. Binkley, Director of the Eastern Regional Division, at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 14, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-22581 Filed 9-22-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 90915-9215]

Positive Determination of Foreign Availability for Prepreg Production Equipment

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of finding of foreign availability.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration determined on August 18, 1989 that foreign availability exists for prepreg production equipment. However, on September 15, 1989, the President determined that export controls on this equipment must be maintained notwithstanding foreign availability, because their absence would prove detrimental to the national security of the United States. The President has directed the Secretary of State to initiate negotiations with source countries, as required by the EAA, for the purpose of eliminating such foreign availability.

FOR FURTHER INFORMATION CONTACT: Lisa Gimelli Hilliard, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5(f) and (h) of the EAA to review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations establishes the procedures and criteria for assessing foreign availability. The Secretary of Commerce or his designee is authorized by statute to determine foreign availability.

In any case in which the Deputy Assistant Secretary for Export Administration determines that an item of comparable quality to a U.S. item controlled for national security purposes is available-in-fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purposes, under EAA section 5(f)(1)(A), the Secretary may not require a validated license for its export.

On April 18, 1989, OFA formally undertook a foreign availability assessment of prepreg production equipment based on a foreign availability submission. This equipment is controlled for national security reasons under ECCN 1357A(e) and is also controlled for foreign policy reasons in accordance with the multilateral Missile Technology Control Regime (MTCR).

OFA completed the assessment on prepreg production equipment and on August 18, 1989, I made a positive determination of foreign availability. In

accordance with section 5(f)(3)(b) of the EAA, the determination was provided for review to the Departments of State and Defense as well as other interested agencies of the U.S. Government. This determination was not affected by the interagency review.

On September 15, 1989, the President determined that export controls on this equipment must be maintained notwithstanding foreign availability, because their absence would prove detrimental to the national security of the United States. The President will actively pursue negotiations with source countries, as required by EAA section 5(f)(4), for the purpose of eliminating such availability. The Secretary of State, in consultation with the Secretaries of Commerce and Defense, has been delegated the authority to conduct such negotiations by the President. While negotiations to eliminate the foreign availability to national security controlled countries are taking place, the current license requirements will remain in place.

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability at the above address.

Dated: September 15, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-22380 Filed 9-22-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 16-89]

Foreign-Trade Zone 49—Newark/Elizabeth, New Jersey; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting authority to expand its zone to include sites in Bayonne and Jersey City, New Jersey, within the Newark Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones (FTZ) Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 18, 1989.

FTZ 49 was approved on April 6, 1979 (Board Order 146, 44 FR 22502, 4/16/79). Expansions were authorized by the

Board on May 26, 1983 (Board Order 211, 48 FR 24958, 6/3/83) and on October 23, 1987 (Board Order 365, 52 FR 41599, 10/29/87). The zone project currently involves the Port Newark/Elizabeth Port Authority Marine Terminal (2100 acres), the adjacent Elizabeth Industrial Park (124 acres), and the nearby Global Marine Terminal (GMT) facility (41 acres) in Bayonne/Jersey City, some 4 miles east of the Port Newark/Elizabeth Marine Terminal.

The grantee is now requesting authority to further expand the zone to include the 145-acre Port Authority Auto Marine Terminal and adjacent 53-acre Greenville Industrial Park on Upper New York Bay's Port Jersey Channel in Bayonne and Jersey City, New Jersey. The sites are located adjacent to the GMT site in Bayonne/Jersey City. The Port Authority recently established the separate Auto Marine Terminal to improve port services for auto-related activity. The Greenville Industrial Park site is a new public industrial park project owned by the Jersey City Economic Development Corporation.

No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Peter J. Baish, Area Director, U.S. Customs Service, New York Region, Airport International Plaza, Room 210A, Newark, New Jersey 07114; and, Colonel Ralph M. Danielson, District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, New York 10278-0090.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 8, 1989.

A copy of the application is available for public inspection at each of the following locations:

Area Director's Office, U.S. Customs Service, Airport International Plaza, Room 210A, Newark, New Jersey 07114.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave. NW., Washington, DC 20230.

Dated: September 18, 1989.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 89-22518 Filed 9-22-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-461-601]

Amendment to Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On August 14, 1989, the Department of Commerce published the final results of its administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics. The review covers one manufacturer/exporter of this merchandise to the United States, Soyuzpromexport ("SPE"), a.k.a. Soyuzagrochimexport, and the period January 2, 1987 through June 30, 1988.

After publication of our final results of antidumping duty administrative review, we discovered ministerial errors in those results. We have corrected the ministerial errors and have amended the final results of administrative review for the period January 2, 1987 through June 30, 1988.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: J.E. Downey or John R. Kegelmann, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5222/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 33262) the final results of its administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics. After publication of our final results of antidumping duty administrative review, we discovered ministerial errors in those results. We have corrected the ministerial errors and have amended the final results of administrative review.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988, which amends section 735 of the Tariff Act of

1930, authorizes Commerce to establish procedures for the correction of ministerial errors in final determinations. Congress has defined the term "ministerial error" to include errors in addition, subtraction, or other arithmetic functions, or clerical errors, such as those resulting from inaccurate copying, duplication, or the like.

Ministerial Errors

We have corrected clerical errors in our final results. Those errors were the margin, citations, and case number.

Amended Final Results of Reviews

We have amended the final results of review as follows:

Manufacturer/Exporter	Previous margin/percent	Corrected margin/percent
Soyuzpromexport (SPE), a.k.a. Soyuzagrochimexport	44.80	68.26

Case Number: A-461-601.

Notice of antidumping duty order: 52 FR 26367, July 14, 1987.

Notice of preliminary results: 54 FR 18920, May 3, 1989.

This amendment is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: September 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-22519 Filed 9-22-89; 8:45 am]

BILLING CODE 3510-DS

[C-508-064]

Fresh Cut Roses From Israel; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty, administrative review.

SUMMARY: On March 13, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on fresh cut roses from Israel. We have now completed that review and determine the total bounty or grant during the period October 1, 1985 through September 30, 1988 to be 9.89 percent *ad valorem*.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT:

Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 10395) the preliminary results of its administrative review of the countervailing duty order on fresh cut roses from Israel (45 FR 58516; September 4, 1980). The Department has now completed that administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Israeli fresh cut roses. During the review period, such merchandise was classifiable under item numbers 192.1810 and 192.1890 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 0603.10.60 of the Harmonized Tariff Schedule.

The review covers the period October 1, 1985 through September 30, 1986 and twelve programs: (1) Government-Guaranteed Minimum Price Program; (2) Export Promotion Financing Fund; (3) Insurance from Israel Foreign Trade Risks Insurance Corporation (FTRIC); (4) Short-term Fuel Advances to Rose Growers; (5) Government Funding of AGREXCO and Purchase of AGREXCO Shares; (6) Government Support of the Flower Board of Israel; (7) Rebate of Export Insurance Premiums; (8) Long-term Industrial Development Loans to AGREXCO; (9) Encouragement of Capital Investment Law (Agriculture) (ECILA); (10) Preferential Short-term Financing under the Export Credit Funds; (11) Cash Payments to Growers for Greenhouses; and (12) Cash Payments to Packing Houses.

Analysis of Comments Received

We have interested parties an opportunity to comment on the preliminary results. We received written comments from the Government of Israel (GOI).

Comment 1: The GOI contends that the deposit rate for the short-term fuel advances to rose growers should be zero. The Department verified that this program was terminated and that all of the short-term fuel loans were

completely repaid by May 1986. Flower growers received no advances or loans thereafter.

Department's Position: We agree. For purposes of the cash deposit of estimated countervailing duties, we determine the benefit from this program to be zero.

Comment 2: The GOI contends that the Department overstated the benefit attributable to IFTRIC by using only the value of exports for which IFTRIC payments were claimed instead of the total value of exports during the review period.

Department's Position: We agree and have recalculated each company's benefit accordingly. We then weight-averaged the resulting benefits by each company's proportion of total rose exports to the United States during the period of review. On this basis, we determine the benefit from this program to be 8.48 percent *ad valorem*.

Comment 3: The GOI argues that the Department erred in determining that government investment in AGREXCO through the purchase of shares is "inconsistent with commercial considerations, and, therefore, countervailable." No government investing in a commercial venture has the same reason for investing or the same expectation as a private investor. Whereas the producer organizations and growers receive an on-going return from their investment in AGREXCO, the GOI's return on its investment in AGREXCO is commercially reasonable because it is prospectively valuable. In the event of the dissolution of AGREXCO, its assets revert to the GOI for distribution after the individual shareholders are paid off at the nominal share value (original purchase price); the estimated value of AGREXCO's assets far exceeds the value of any investment the GOI has made in AGREXCO. Furthermore, although the GOI does not itself use the services of AGREXCO, it is under an obligation to provide infrastructure to its citizens. In 1989, the rights of usage to the AGREXCO facility revert to the Airport Authority, *i.e.*, the GOI. In effect, by building the airport facility with private as well as public money, the GOI has been able to build infrastructure at less cost to itself. Finally, if the Department requires that a government investment be made for the identical reasons and identical expectations as a private investment, then the Department is fashioning a rule that says that every government investment in a commercial venture is a subsidy.

Department's Position: We disagree. We have consistently held that government provision of equity does not

per se confer a subsidy. However, to consider a government investment consistent with commercial considerations, the government should expect a reasonable rate of return on equity over a reasonable period of time. As we stated in our preliminary results, the Israeli government can neither receive dividends nor sell its shares in a secondary market for more than their nominal value. Thus the government's rate of return as a shareholder of AGREXCO equity can only be zero. The fact that, in the event of dissolution of the enterprise, the assets of AGREXCO would revert to the GOI is not a criterion by which a reasonable investor evaluates and chooses among alternative investments. With respect to the GOI's obligation to provide infrastructure and the use of its investment in AGREXCO to build infrastructure at less cost to itself, the GOI has neither defined how the rights of usage could be considered a real return, nor provided us with information necessary to assign an appropriate asset value to such rights. Because of the impossibility of analyzing the costs and yield rates of an investment in fixed assets without information on depreciation, depletion, and capitalized costs, the "rights of usage" to the AGREXCO facility are an underfined and intangible return.

Furthermore, we have consistently held that government activities such as building roads, ports, low-cost utilities, training centers, and plant sites, constitute bounties or grants only when they are limited to a specific enterprise or industry, or group of enterprises or industries. The Israeli Ministry of Agriculture provided funds to AGREXCO specifically to finance the expansion of AGREXCO's air freight terminal at Ben Gurion Airport. While the airport facility is located on publicly-owned Airport Authority land, it is leased exclusively to AGREXCO and no other enterprise or industry has access to the terminal.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant during the period October 1, 1985 through September 30, 1986 to be 9.89 percent *ad valorem*.

The Department will instruct the Customs Service to assess countervailing duties of 9.89 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after October 1, 1985 and on or before September 30, 1986.

Further, due to the elimination of the Export Promotion Financing Fund and

the Short-Term Fuel Advances Program, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 9.44 percent of the f.o.b. invoice price on all shipments of Israeli fresh cut roses entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the *Federal Register* on December 27, 1988 (53 FR 53206) (to be codified at 19 CFR 355.22).

Dated: September 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 22520 Filed 9-22-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog and the Intercouncil Shark Committees will hold public meetings.

The Council's Surf Clam and Ocean Quahog Committee will hold two separate meetings at the Holiday Inn, 45 Industrial Highway, Essington, PA; telephone: (215) 521-2400. On September 25, 1989, at 1 p.m., the Committee will receive industry comments on proposed Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan (FMP). On October 6 at 8 a.m., the Committee will finalize its recommendations to the Mid-Atlantic Fishery Management Council on proposed Amendment #8 to the Surf Clam and Ocean Quahog FMP.

On September 26 at 8 a.m., the Intercouncil Shark Committee will meet at the Ramada Inn, 76 Industrial Highway, Essington, PA; telephone: (215) 521-9600, to develop its comments on the Secretarial Shark FMP.

For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South

New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: September 19, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 22479 Filed 9-22-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 25, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection,

grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 19, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Planning, Budget, and Evaluation

Type of Review: Reinstatement

Title: Income Contingent Loan Program Demonstration Study

Frequency: Annually

Affected Public: Individuals or households; Non-profit institutions

Reporting Burden:

Responses: 2550

Burden Hours: 765

Recordkeeping Burden:

Burden Hours: 0

Abstract: This study will collect data from current and former borrowers of income contingent loans. The data collected will be used by the Department to meet the legislative requirements of examining the income contingent repayment method.

Office of Educational Research and Improvement

Type of Review: Extension

Title: Applications for Grants Under Library Career Training Program, Title II-B of the Higher Education Act

Frequency: Annually

Affected Public: State or local governments; Non-profit institutions

Reporting Burden:

Responses: 90

Burden Hours: 1,260

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by institutions of higher education and library organizations to apply for funds under Title II-B of the Higher Education Act, as amended. The Department will use this information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Reinstatement

Title: Performance Report Law-Related Education Program

Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden:
Responses: 32
Burden Hours: 96
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Non-profit Institutions and State or local Governments that have participated in the Law-Related Education Program must submit this report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Report of Program Settings Where Early Intervention Services Are Provided to Handicapped Infants and Toddlers and Their Families
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 928
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will provide the Department with instructions and forms for States to report the program setting where handicapped infants and toddlers receive services. This data will serve as a basis for monitoring and implementing Federal Programs and reporting to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: State Plan under Part B of the Education of the Handicapped Act
Frequency: Triennial
Affected Public: State or local governments; Federal agencies or employees
Reporting Burden:
Responses: 19
Burden Hours: 551
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: States are required to submit a State plan in order to receive funds under the Education of the Handicapped Act, as amended. The Department will use the information as a basis for determining grant eligibility, compliance review and enforcement, and the kinds of

technical assistance that States may need.

[FR Doc. 89-22475 Filed 9-22-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96-511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the

Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Jay Casselberry, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, 1000 Independence Avenue SW., Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy collection submitted to OMB for review was:

1. Environment, Safety, and Health; Fossil Energy; and the Federal Energy Regulatory Commission.
2. EIA-767.
3. 1901-0267, 1902-0034, 0608-0054, and 2010-0010.
4. Steam-Electric Plant Operation and Design Report.
5. Revision—The proposed form will eliminate unneeded data, preprint the design data, and revise the format and instructions, thus making it easier to understand and complete.
6. Annually.
7. Mandatory.
8. State or local governments, Businesses or other for profit, and Federal agencies or employees.
9. 908 respondents.
10. 908 responses annually.
11. The estimated average hours per response for each of the respondents is 66.11 burden hours.
12. The estimated total reporting hours are 60,032.
13. Form EIA-767 is a consolidation of the data requirements of the Federal Energy Regulatory Commission, Environmental Protection Agency, Bureau of Economic Analysis (Commerce), and the Department of Energy, Office of the Assistant Secretary for Environment, Safety, and Health and the Office of the Assistant Secretary for Fossil Energy. Data are collected concerning air emission and water quality and are used for economic, regulatory, and environmental analysis. Respondents are steam-electric power plants of 10 megawatts or more.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 19, 1989.

Yvonne M. Bishop,
Director, Statistical Standards, Energy
Information Administration.
[FR Doc. 89-22587 Filed 9-22-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES-89-35-000, et al.]

El Paso Electric Company, et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

September 15, 1989.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Co.

[Docket No. ES89-35-000]

Take notice that on September 7, 1989, El Paso Electric Company ("Company") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to (i) enter into a committed revolving credit facility, which would provide for short-term borrowings by the Company from time to time through the May 31, 1991 expiration date of the Facility, up to an aggregate of \$175 million principal amount, reducing to \$150 million principal amount not later than December 31, 1989, and to issue security for the Facility, including first and second mortgage bonds of the Company in principal amount equal to the committed amount of the Facility; and (ii) to issue, on a secured and unsecured basis, other short-term (maturities not in excess of one year) promissory notes, commercial paper and other obligations, none of which would have maturities later than December 31, 1991, with the aggregate borrowings outstanding under the revolving credit facility and under such promissory notes, commercial paper and other obligations not to exceed in the aggregate \$200 million at any one time.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Blue Ridge Power Agency, Central Virginia Electric Cooperative, Inc., and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Co.

[Docket No. EL89-53-000]

Take notice that on September 13, 1989 Blue Ridge Agency, Central Virginia Electric Cooperative, Inc., and Craig-Botetourt Electric Cooperative, Inc. (Plaintiffs) tendered for a filing a

Complaint against Appalachian Power Company (APCO). Plaintiffs submit that APCO has charged and is charging the Plaintiffs wholesale rates that are unjust and unreasonable. The Plaintiffs request that the Commission: (1) Order a hearing to investigate issues raised in the Complaint, (2) establish a refund effective date in this proceeding at the earliest date permitted by law, (3) determine the just and reasonable rates for service to the Plaintiffs pursuant to section 206 of the Federal Power Act as amended by the Regulatory Fairness Act, (Act) (4) order refunds pursuant to the Act of overpayments made by the Plaintiffs to APCO, and (5) grant such other relief as the Commission finds appropriate.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Western Massachusetts Electric Co.

[Docket No. ER89-585-000]

Take notice that on September 13, 1989, Western Massachusetts Electric Company (WMECO) filed supplemental information in this docket regarding a proposed rate schedule for transmission, transformation, and distribution service to UNITIL Power Corp. in response to a request from the Commission for additional information.

WMECO states that copies of this information have been mailed to UNITIL Power Corp.

WMECO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule to become effective September 1, 1989.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Co.

[Docket No. ER89-644-000]

Take notice that on September 8, 1989, Northeast Utilities Service Company (NUSCO), as agent for the Connecticut Light and Power Company (CL&P) tendered for filing a Notice of Termination of the Sales Agreement with respect to various fossil generating units between CL&P and Public Service Company of New Hampshire (PSNH).

NUSCO requests that the Commission allow the termination for the Agreement to take effect on September 24, 1989.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Power Service Corp.

[Docket No. ER89-648-000]

Take notice that on September 11, 1989, Allegheny Power Service Corporation on behalf of Monongahela Power Company and West Penn Power Company (the APS Parties), and Pennsylvania Power Company and Ohio Edison Company (the OE Parties), filed Modification No. 11 to the Interchange Agreement between APS Parties and the OE Parties, which Modification revises Schedules B, C, and D to the Interchange Agreement.

The proposed revised Schedules B, C, and D would change rates charged by all parties under those Schedules for Interchange Power and Energy, Short-Term Power and Energy, and Limited Term Power and Energy under the Interconnection Agreement between and APS Parties and the OE Parties, and would also reorganize, standardize and update the language used in those Schedules.

The proposed Schedules are for the purpose of allowing the Parties thereto more flexibility in the rates that they charge so as to remain competitive in the power sales market. The Parties request an effective date of November 1, 1989 for the proposed Schedules.

Copies of the filing have been served upon the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, and the West Virginia Public Service Commission.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this Notice.

6. Southwestern Public Service

[Docket No. ER89-651-000]

Take notice that Southwestern Public Service Company ("Southwestern") on September 8, 1989, tendered for filing new contracts for full requirements electric power service to Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., of New Mexico Lee County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

Firm power and energy are currently provided under Rate Schedule FERC No. 87 for Central Valley Electric Cooperative, Inc., Rate Schedule FERC No. 89 for Farmers' Electric Cooperative, Inc., of New Mexico, Rate Schedule FERC No. 103 for Lea County Electric Cooperative, Inc., and Rate Schedule FERC No. 95 for Roosevelt County Electric Cooperative, Inc.

The contracts reflect each customer's request for allocation of power and energy from the Salt Lake City Area Integrated Projects ("SLCA Integrated

Projects"), administered by the Western Area Power Administration, which is an agency of the United States Department of Energy. Southwestern has agreed to receive energy equivalent to the SLCA Integrated Projects energy, less losses, and provide a billing adjustment to the customer's bill.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Power and Light Co.

[Docket No. ER89-652-000]

Take notice that Wisconsin Power and Light Company (WPL), on September 12, 1989, tendered for filing proposed changes in its W-2, W-4, Partial Requirements (W-1B) and Transmission (W-1C), Wholesale for Resale Service Schedules. WPL claims that the proposed changes will not produce a revenue increase or decrease.

WPL states that the proposed changes were developed in conjunction with the affected customer groups. By its filing, WPL is requesting an effective date of August 1, 1989. Currently, there are no customers taking service under the existing partial requirements (W-1B), transmission (W-1C), or interruptible (W-4) service schedules.

Copies of the filing were served upon the affected jurisdictional customers and the Public Service Commission of Wisconsin.

Comment date: September 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22494 Filed 9-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2082-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

September 15, 1989.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP89-2082-000]

Take notice that on September 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-2082-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon its currently authorized Stauffer Sales Meter Station and the related firm transportation and delivery of up to 15,000 therms per day of non-jurisdictional direct sales to Stauffer Chemical Company (Stauffer) pursuant to Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a Federal Power Commission order issued in Docket No. G-12793 on September 10, 1957, Pacific Northwest Pipeline Corporation, a predecessor of Northwest, was authorized to construct and operate the Stauffer Sales Meter Station. Northwest further states that by an order issued March 31, 1970, the certificate issued in Docket No. G-12793 was amended to allow Northwest's predecessor in interest, El Paso Natural Gas Company, to use the Stauffer Sales Meter Station for the direct sales and delivery of up to 1,500 Mcf of natural gas per day on a firm basis. Northwest states that it is a party to an Industrial Gas Sales Contract with Stauffer dated February 10, 1978, as amended May 5, 1978, January 1, 1980, and April 1, 1983, which provided for the firm sales and delivery by Northwest of up to 15,000 therms per day of natural gas to Stauffer at the Stauffer Sales Meter Station located on Northwest's 22-inch mainline in Section 31, Township 22 North, Range 119 West, Lincoln County, Wyoming.

According to Northwest, its sales deliveries to Stauffer for use at its Sage, Wyoming fertilizer plant steadily declined, with the last deliveries occurring in August 1988. It is further stated that by letter dated September 16, 1988, Stauffer requested that Northwest shut off the gas supply to its fertilizer plant and indicated that it was

dismantling its plant operations. Northwest indicates that the primary term of the sales contract extended only to December 31, 1978, and continued month to month thereafter subject to termination upon one month written notice. In response to Stauffer's discontinuance to operations, Northwest states that by letter dated May 5, 1989, it notified Stauffer that it was terminating the contract effective July 1, 1989.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. TPC Transmission, Inc.

[Docket No. CP89-2057-000]

Take notice that on September 5, 1989, TPC Transmission, Inc. (TPC), 14811 St. Mary's Lane, Suite 200, Houston, Texas 77079, filed in Docket No. CP89-2057-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the sale, transportation, or assignment of natural gas in interstate commerce as if TPC were an intrastate pipeline as defined in subparts C, D, and E of part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TPC states that it is a Hinshaw pipeline operating in the State of Texas and that upon commencement of operation of its Stratton Ridge Pipeline it would be subject to the regulatory jurisdiction of the Texas Railroad Commission. TPC states that during the last twelve month period, TPC received no volumes of gas from any source. TPC further states that upon completion of the Stratton Ridge Pipeline, all gas received by TPC would be gas produced from the Outer Continental Shelf and received at or within the boundary of the State of Texas. TPC explains that this gas would be exempt from the Commission's jurisdiction under the Natural Gas Act.

TPC explains that it does not now have a city-gate rate on file with the Texas Railroad Commission. TPC further explains that prior to commencement of any transportation transaction, it would apply for Commission approval of its transportation rates in accordance with § 284.123(b)(2) of the Commission's Regulations.

TPC states that it would comply with the conditions set forth in subparagraph (e) of § 284.224 of the Commission's Regulations.

Comment date: October 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP89-2075-000]

Take notice that on September 11, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in docket No. CP89-2075-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Total Minatome Corporation (Minatome), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated July 6, 1989, under its Rate Schedule IT, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Minatome. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas at various delivery points in Alabama and Georgia.

Southern advises that service under § 284.223(a) commenced July 11, 1989, as reported in Docket No. ST89-4475-000. Southern further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Co.

[Docket No. CP89-2085-000]

Take notice that on September 12, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2085-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Total Minatome Corporation (Minatome), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated July 6, 1989, under its Rate Schedule IT, it proposes to transport up to 200,000 MMBtu per

day equivalent of natural gas for Minatome. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various delivery points in Georgia, Tennessee and South Carolina.

Southern advises that service under § 284.223(a) commenced July 13, 1989, as reported in Docket No. ST89-4481-000. Southern further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. American Distribution Co. (Alabama Division)

[Docket Nos. DP84-474-012 and CP86-263-004]

Take notice that on September 11, 1989, American Distribution Company (Alabama Division), (ADC-Ala), 333 Clay Street, Suite 2000, Houston, Texas 77002, filed a motion in Docket Nos. CP84-474-012 and CP86-263-004 to delete the one-year term limitation imposed by orders issued December 23, 1986, as amended, and December 23, 1987, as amended, and for a waiver of the filing fee of \$26,280 submitted with the motion, or in the alternative if the Commission does not grant the prior motion, that the certificated terms be made coterminous with the expiration dates of the transportation contracts, all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

ADC-Ala states that it objects to the imposition of the one-year term limitation imposed on its transportation certificates. ADC-Ala argues that the one-year limitation is not a general rule developed through rulemaking where the public has an opportunity to challenge the rule, but has been imposed in individual proceedings. ADC-Ala alleges that the Commission has been unable to provide facts supporting the need for the rule. Also, ADC-Ala alleges that in ADC-Ala's case the facts prove the contrary. ADC-Ala notes that the term limitation imposes planning and supply security constraints on all of the parties involved with the transportation service as well as the need to pay the required filing fees for yearly extensions.

ADC-Ala states that the Fifth Circuit Court of Appeals found the one-year limitation arbitrary and capricious and vacated that limitation in *Florida Gas Transmission Co. v. Ferc* (876 F.2d, 5th Cir 1989). ADC-Ala requests that, in view of the court ruling in the Florida

Gas case, that the previously-mentioned orders be amended to delete the one-year term limitation and that the filing fee submitted with the motion be returned. In the alternative, ADC-Ala requests that the certificate be amended to provide for a term coterminous with the transportation contracts. No other changes to the transportation certificates are proposed.

Comment date: October 6, 1989, in accordance with Standard Paragraph F at the end of the notice.

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP86-317-006]

Take notice that on September 6, 1989, Panhandle Eastern Pipe Line Company (Panhandle), 5400 Westheimer Court, Houston, Texas, filed in Docket No. CP86-317-006 an amendment to its Presidential Permit pursuant to section 3 of the Natural Gas Act to provide for the usage of the Windsor Laterals, all as more fully set forth in the application on file with the Commission and open for public inspection.

It is stated that Applicant seeks authorization to use two parallel 12 $\frac{3}{4}$ -inch pipelines, previously certificated, with a design capacity of 150,000 Mcf per day from Panhandle to Union Gas Company of Canada, Ltd. (Union) and 140,000 Mcf per day from Union to Panhandle, which extends from the west bank of the Detroit River in Michigan and connects with the transmission pipelines owned by Union at the International Boundary. The Windsor Laterals, it is further stated, can be used for both import and export purposes.

Applicant specifically requests clarification by the Commission concerning the usage of the Windsor Laterals under the provisions of Applicant's existing Presidential Permit which was issued on March 14, 1986. Applicant requests that the Commission confirm that the Presidential Permit authorizes the use of Windsor Laterals up to the design capacity of 150,000 Mcf per day. It is alleged that previously the design capacity, due to operational configuration, was designated at 86,000 Mcf per day.

Comment date: October 6, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Co.

[Docket No. CP89-2067-000]

Take notice that on September 7, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed a request with the Commission in Docket No. CP89-2067-000 pursuant to

§ 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap, pipeline, metering, and appurtenant facilities for its interruptible transportation service to Air Products and Chemicals, Inc. (Air Products), under its blanket certificate issued in Docket No. CP82-406-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Southern proposes to construct and operate approximately 1.5 miles of eight-inch pipeline and certain measurement and regulating facilities in order to provide interruptible natural gas transportation to Air Products' New Orleans, Louisiana, plant. Southern states that the proposed facilities would cost approximately \$1,014,210 to construct and install.

Southern also proposes to transport natural gas for Air Products under its blanket certificate issued in Docket No. CP88-316-000 pursuant to Section 7 of the NGA and a June 8, 1989, service agreement. Southern states that it would transport natural gas volumes under its Rate Schedule IT from various receipt points on its system in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas, and offshore Texas to the proposed delivery point at Air Products' New Orleans plant. Southern would transport up to 52,000 MMBtu equivalent of natural gas on a peak day, 15,000 MMBtu equivalent on an average day, and 5,475,000 MMBTU equivalent on an annual basis for Air Products.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williston Basin Interstate Pipeline Co. [Docket No. CP89-2083-000]

Take notice that on September 12, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed in Docket No. CP89-2083-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a sales station and appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP82-487-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon the McCulloch Sales Measurement Station and related facilities on its natural gas transmission system located

in the Ute field in Campbell County, Wyoming. Williston Basin states that the producer in the Ute field has removed their field facilities and the sales station is no longer needed or in use to effectuate delivery of gas owned by the producer for field fuel.

Williston Basin further states that the abandonment will consist of the removal of the security fence, steel building and concrete flooring. The sales tap, it is said, would remain in place to serve a right-of-way customer.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corp. [Docket No. CP89-2096-000]

Take notice that on September 14, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-2096-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Industrial Energy Services Company (Industrial Energy), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated July 12, 1989, under its Rate Schedule IT, it proposes to transport up to 268,400 dekatherms (dt) per day equivalent of natural gas for Industrial Energy. Transco states that it would transport the gas from receipt points located offshore and onshore Louisiana, offshore Texas, and in Mississippi, and would deliver the gas at delivery points in North Carolina, South Carolina, Virginia, Maryland, Pennsylvania, New York, Delaware, New Jersey, onshore Louisiana, and onshore Texas.

Transco advises that service under § 284.223(a) commenced August 11, 1989, as reported in Docket No. ST89-4626. Transco further advises that it would transport 30,000 dt on an average day and 10,950,000 dt annually.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC

20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22495 Filed 9-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-53-000]

State of West Virginia Department of Commerce, Labor and Environmental Resources/Chesterfield Energy Corp., et al. Petition to Reopen and Vacate Final Well Category Determinations

September 15, 1989.

On August 22, 1989, the State of West Virginia, Department of Commerce, Labor and Environmental Resources (West Virginia) filed with the Federal Energy Regulatory Commission, pursuant to § 275.205 of the Commission's regulations, a petition to reopen and vacate 46 final well category determinations for wells located in various counties in West Virginia.

The applications for the determinations were filed with West Virginia by Chesterfield Energy Corporation (Chesterfield) prior to 1985. In November and December 1988, West Virginia gave the Commission written notice of the affirmative determinations and they became final forty-five days thereafter. West Virginia states in its petition that by letter dated February 13, 1985, Chesterfield filed a request with West Virginia to withdraw the 46 applications and that the withdrawal letter was misplaced. West Virginia submits that since the withdrawal letter is dated in 1985 and the affirmative determinations were filed in 1988, that the withdrawal letter constitutes an omitted statement of material fact which justifies the reopening of the 46 determinations.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 16, 1989. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-22496 Filed 9-22-89; 8:45 am]

BILLING CODE 5717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51739; FRL-36508]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of 50 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-852—September 24, 1989.
P 89-955, 89-956—November 1, 1989.
P 89-957, 89-958, 89-959, 89-960, 89-961, 89-962, 89-963, 89-964, 89-965, 89-966, 89-967, 89-968, 89-969—November 4, 1989.
P 89-970—November 5, 1989.
P 89-971, 89-972—November 6, 1989.
P 89-973, 89-974, 89-975, 89-976, 89-977, 89-978, 89-979, 89-980—November 7, 1989.
P 89-981, 89-982—November 8, 1989.
P 89-984, 89-985, 89-986, 89-987, 89-988, 89-989, 89-990, 89-991, 89-992, 89-993—November 11, 1989.
P 89-994, 89-995, 89-996, 89-997, 89-998, 89-999, 89-1000, 89-1001, 89-1002, 89-1003, 89-1004—November 12, 1989.

Written comments by:

P 89-852—August 25, 1989.
P 89-955, 89-956—October 2, 1989.
P 89-957, 89-958, 89-959, 89-960, 89-961, 89-962, 89-963, 89-964, 89-965, 89-966, 89-967, 89-968, 89-969—October 5, 1989.
P 89-970—October 6, 1989.
P 89-971, 89-972—October 7, 1989.
P 89-973, 89-974, 89-975, 89-976, 89-977, 89-978, 89-979, 89-980—October 8, 1989.
P 89-981, 89-982—October 9, 1989.
P 89-984, 89-985, 89-986, 89-987, 89-988, 89-989, 89-990, 89-991, 89-992, 89-993—October 12, 1989.
P 89-994, 89-995, 89-996, 89-997, 89-998, 89-999, 89-1000, 89-1001, 89-1002, 89-1003, 89-1004—October 13, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-51739]" and the specific PMN number should be sent to: Document

Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-852

Importer. Confidential.

Chemical. (G) ETFE copolymer.

Use/Import. (S) Wire coating. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 89-955

Importer. Confidential.

Chemical. (G) Ester with copolymer of methacrylic acid acrylonitrile.

Use/Import. (G) Binding agent for printing plate. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 800 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-956

Importer. Confidential.

Chemical. (G) Ester with copolymer of methacrylic acid and acrylonitrile.

Use/Import. Binding agent for offset printing. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-957

Manufacturer. The Dow Chemical Company.

Chemical. (G) Substituted triazole.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: slight species (Rabbit).

P 89-958

Importer. The Dow Chemical Company.
Chemical. (G) Substituted triazole.
Use/Import. (S) Chemical intermediate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species(Rat). Eye irritation: strong species(Rabbit). Skin irritation: slight species(Rabbit).

P 89-959

Importer. The Dow Chemical Company.
Chemical. (G) Substituted triazole.
Use/Import. (S) Chemical intermediate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 200-2,000 mg/kg species(Rat). Eye irritation: strong species(Rabbit). Skin irritation: slight species(Rabbit).

P 89-960

Importer. The Dow Chemical Company.
Chemical. (G) Sulfonamide salt.
Use/Import. (S) Chemical intermediate. Import range: Confidential.

P 89-961

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted aniline.
Use/Production. (G) Resinous. Prod. range: Confidential.

P 89-962

Importer. Confidential.
Chemical. (G) Bisphenol type polyester.
Use/Import. (G) Resinous binder for open, nondispersive use. Import range: Confidential.

P 89-963

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Polyalkylene polyamine.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 365 mg/kg species(Rat). Acute dermal toxicity: LD50 1,578 mg/kg species(Rabbit). Skin irritation: strong species(Rabbit).

P 89-964

Manufacturer. NL Chemicals, Inc.
Chemical. (G) Polyester resin (alkyd resin).
Use/Production. (G) Polyester resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89-965

Manufacturer. Confidential.
Chemical. (G) Aliphatic sulfonic acid ester.

Use/Production. (S) Catalyst for thermoset baking coatings. Prod. range: 700-1,000 kg/yr.

P 89-966

Manufacturer. Confidential.
Chemical. (G) Organofunctional silane.
Use/Production. (G) Coating additive. Prod. range: Confidential.

P 89-967

Manufacturer. Confidential.
Chemical. (G) Surface treated pigment.
Use/Production. (S) Coating. Prod. range: Confidential.

P 89-968

Manufacturer. Confidential.
Chemical. (G) Heteromonocycle sulfonyl aniline.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 89-969

Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonamide.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 89-970

Manufacturer. Confidential.
Chemical. (G) Organo-Tin IV Catalyst.
Use/Production. (G) Silicone condensation catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2.5-5.0 gm/kg species(Rat). Eye irritation: strong species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-971

Manufacturer. Confidential.
Chemical. (G) Copolymer of the quaternary salts.
Use/Production. (G) Polymer for contained consumer use. Prod. range: 1,000-10,000 kg/yr.

P 89-972

Manufacturer. Confidential.
Chemical. (G) Safflower-chlorendic acid alkyd polymer.
Use/Production. (S) Fire retardant paints. Prod. range: Confidential.

P 89-973

Importer. Confidential.
Chemical. (G) Aromatic bis(allylphenyl)ether.
Use/Import. (G) Thermoset polymer modifier. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 3930 mg/kg species(Rat). Acute dermal toxicity: LD50 5,000 mg/kg species(Rabbit). Mutagenicity: positive.

P 89-974

Manufacturer. Confidential.
Chemical. (G) Acrylic multipolymer.
Use/Production. (G) Open, nondisperse use. Prod. range: Confidential.

P 89-975

Manufacturer. Confidential.
Chemical. (G) Acrylic terpolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-976

Manufacturer. Confidential.
Chemical. (G) Acrylate methacrylate polymer with methyl methacrylate.
Use/Production. (G) Dispersively used coating. Prod. range: 50,000-100,000 kg/yr.

P 89-977

Manufacturer. Confidential.
Chemical. (G) Substituted polyethylene glycol succinate.
Use/Production. (S) Emulsifier for internal sizing in paper making. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 5 g/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit). Mutagenicity: negative.

P 89-978

Manufacturer. Confidential.
Chemical. (G) Substituted polyethylene glycol succinate.
Use/Production. (S) Emulsifier for internal sizing in paper making. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 5 g/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-979

Manufacturer. Confidential.
Chemical. (G) Substituted polyethylene glycol succinate.
Use/Production. (S) Emulsifier for internal sizing in paper making. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 5 g/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit). Mutagenicity: negative.

P 89-980

Manufacturer. Confidential.

Chemical. (G) Substituted polyethylene glycol succinate.

Use/Production. (S) Emulsifier for internal sizing in paper making. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 5 g/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit). Mutagenicity: negative.

P 89-981

Manufacturer. Confidential.

Chemical. (G) Chlorinated aromatic polycarboxylic ester.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 89-982

Manufacturer. Confidential.

Chemical. (G) Aromatic polyarboxylic ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 89-984

Manufacturer. Confidential.

Chemical. (G) Diazonaphthoquinone photoactive compound.

Use/Production. (G) Photoimaging chemical for electronic circuits. Prod. range: Confidential.

P 89-985

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Lithium alkyl silanolate.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 89-986

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Methacrylates silane.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 89-987

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Polysiloxane.

Use/Production. (S) Polymeric intermediate. Prod. range: Confidential.

P 89-988

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Acrylic silicone polymer.

Use/Production. (G) Polymeric coating. Prod. range: Confidential.

P 89-989

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Acrylic silicone polymer.

Use/Production. (G) Polymeric coating. Prod. range: Confidential.

P 89-990

Importer. Basf Corp. Coatings and Colorant Div.

Chemical. (G) 9,10-Anthracenedione, disubstituted amino derivative.

Use/Import. (G) Liquid coolant. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 10,000 mg/kg species(Rat). Eye irritation: moderate species(Rabbit). Skin irritation: moderate species(Rabbit). Mutagenicity: positive.

P 89-991

Manufacturer. Confidential.

Chemical. (G) Vinyl sulfonate, amine salt.

Use/Production. (G) Open, dispersive. Prod. range: Confidential.

P 89-992

Manufacturer. Confidential.

Chemical. (G) Aromatic alkylated aniline.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 89-993

Importer. Confidential.

Chemical. (G) Poly hydroxy benzophenone.

Use/Import. (G) Used as a reactant in the manufacture of a light sensitive electronic chemical. Import range: Confidential.

P 89-994

Manufacturer. Confidential.

Chemical. (G) Sodium salt of acrylates/stearate-20 methacrylate copolymer.

Use/Production. (G) Thickens for water borne product. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Acute dermal toxicity: LD50 > 5 g/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: slight species(Rabbit).

P 89-995

Manufacturer. Basf Structural Materials, Inc.

Chemical. (G) Epoxy bulk molding compound.

Use/Production. (S) Mixed with fillers to form molding compound. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11.4 g/kg species(Rat). Acute dermal toxicity: LD50 > 20 ml/kg species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: moderate species(Rabbit).

P 89-996

Manufacturer. Confidential.

Chemical. (G) Urethane modified polyester.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 89-997

Manufacturer. E.I. du Pont de Nemours & Co., Inc.

Chemical. (G) Polysubstituted urethane.

Use/Production. (G) Nondispersive use. Prod. range: Confidential.

Toxicity Data. Eye irritation: moderate species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-998

Manufacturer. Confidential.

Chemical. (G) Polyaromatic polyurethane.

Use/Production. (G) Openly used coating formulation. Prod. range: 100,000-1,000,000 kg/yr.

P 89-999

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional polyurea polyol.

Use/Production. (G) Openly used coating formulation. Prod. range: 100,000-1,500,000 kg/yr.

P 89-1000

Manufacturer. Bostik Division.

Chemical. (G) Polyamide.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-1001

Manufacturer. Confidential.

Chemical. (G) Disubstituted diheteromonocycle, disubstituted diheteromonocyclic.

Use/Production. (S) Component of dyestuff. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3,160-5,000 mg/kg. Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-1002

Importer. Basf Corporation.

Chemical. (S) 4-Isothiazolecarbonitrile, 5-amino-3-(phenylmethyl)-.

Use/Import. (S) Intermediate for coatings dyestuff. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 89-1003

Importer. Basf Corporation.

Chemical. (S) 1H-pyrazol-5-amine, 1-(phenylmethyl)-.

Use/Import. (S) Intermediate used in coatings dyestuff. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 339 mg/kg species(Rat). Eye irritation: strong species(Rabbit). Mutagenicity: positive.

P 89-1004

Manufacturer. Confidential.

Chemical. (S) Aqueous organic amine salt solution.

Use/Production. (G) Alternative blowing agent to manufacture light polyurethane foams. Prod. range: Confidential.

Dated: September 13, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-22578 Filed 9-22-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59276; FRL-3650]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 2 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by:

T 89-25—October 8, 1989.

T 89-26—October 1, 1989.

ADDRESS: Written comments, identified by the document control number "(OPTS-59276)" and the specific TME number should be sent to:

Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-

799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TMI received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-25

Close of Review Period. October 22, 1989.

Manufacturer. Confidential.

Chemical. (G) Substituted heterocycle.

Use/Production. (G) Resin additive.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG.

Species (Rat). Acute dermal toxicity: LD50 > 2,000 MG/KG.

Species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

T 89-26

Close of Review Period. October 15, 1989.

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (G) Lignin, depolymerized
Use/Production. (G) Dispersant for carbon black. Prod. range: Confidential.

Dated: September 11, 1989.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-22577 Filed 9-22-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3650-6]

Arbuckle-Simpson Aquifer of South Central Oklahoma Sole Source Aquifer; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator, Region 6 of the U.S. Environmental Protection Agency (EPA) has determined that a portion of the Arbuckle-Simpson Aquifer system is the sole or principal source of drinking water for an area comprising portions of Johnston, Murray, and Pontotoc counties in south-central Oklahoma, and that this aquifer, if contaminated would create a

significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the outcrop area of the aquifer or its streamflow source area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern Time, October 10, 1989.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Clay Chesney, Office of Ground Water, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202 (214) 655-6466.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), Public Law 83-523) states:

If the Regional Administrator determines on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the *Federal Register*. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Regional Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On July 29, 1988, Soroptimist International of Ada, Inc., of Ada, Oklahoma, petitioned the Environmental Protection Agency, Region 6, to designate a portion of the aquifer system in south-central Oklahoma as a sole or principal source of drinking water. On November 15, 1988, EPA published public notice announcing the receipt of the petition and requesting public comment. A public hearing was held in Ada, Oklahoma, on December 15, 1988. The public was invited to submit comments and information on the petition until December 30, 1988.

After review of available information, EPA determined that the aquifer system

is the sole or principal source of drinking water for the aquifer service area. The aquifer recharge area and streamflow source area occupy portions of Johnston, Murray, and Pontotoc counties in south-central Oklahoma.

II. Basis for Determination

Among the factors to be considered by the Region 6 Administrator in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer system is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Region 6 Administrator has made the following findings which are the bases for the determination noted above:

1. The Arbuckle-Simpson aquifer system supplies all of the public and domestic water consumed in the aquifer service area.

2. There is no existing alternative drinking water source or combination of sources which provides 50% or more of the drinking water to the area, nor is there any available cost-effective source capable of supplying the drinking water demands for the designated area.

3. The Arbuckle-Simpson aquifer system consists predominantly of limestone, dolomite, and sandstone which crops out over a 500 square mile area, and acts as a reservoir in which water is stored in numerous interstices from small intergranular pores to open fractures and caverns. Where the aquifer is exposed at the surface in the recharge area, it is vulnerable to contamination from a number of sources including but not limited to chemical spills, highway and urban runoff, septic systems, leaking storage tanks and landfill leachate. Shallow public and domestic wells which withdraw water from the aquifer in the recharge area are most susceptible to contamination. Since ground water contamination can be difficult or sometimes impossible to reverse and since all of the drinking water in the designated area is provided by the system, contamination of the aquifer system would pose a significant public health hazard.

III. Description of the Arbuckle-Simpson Aquifer System and Its Recharge Area

The Arbuckle-Simpson Group of Ordovician age forms three distinct outcrop areas in the Arbuckle Mountains of south central Oklahoma. The designated area consists of the easternmost of the three outcrop areas, and occupies approximately 330 square

miles in portions of Johnson, Murray, and Pontotoc counties.

The Arbuckle and Simpson Groups that comprise the aquifer system consist of limestone, dolomite and sandstone. All rocks of the aquifer system have been structurally deformed and act as a reservoir in which water is stored in numerous small intergranular pores, open fractures and caverns.

The northwestern boundary of the outcrop area consists of a sedimentary contact where the aquifer plunges below younger sedimentary rocks of Pennsylvanian age. The contact meanders toward the northeast from the vicinity of the town of Sulphur to a point about one mile northeast of the town of Roff where it abruptly turns to the east.

The contact passes south of Fitzhugh where it is disturbed by a set of faults. The northeast boundary, which extends from Fitzhugh to a point just west of Bromide consists of sedimentary contacts where the aquifer passes under younger rocks, but much of this area is cut by a series of closely spaced faults which divide the rocks into numerous small fault blocks. It is probable that the aquifer does not extend far into the subsurface along the northeast boundary before it is interrupted by faults which severely restrict circulation of the ground water.

The southern boundary of the outcrop area is strongly dominated by several long faults which terminate the aquifer at pre-Cambrian granite or younger sedimentary rocks.

The aquifer is recharged by precipitation which falls on the outcrop area within the above described boundaries, and to a lesser extent by streams which originate within the streamflow source area which lies just outside the outcrop area.

The streamflow source area occupies a relatively small tract one to two miles wide along the northwest boundary of the recharge area. Starting at a point 1.3 miles south of Sulphur, this boundary meanders northeast along a watershed divide which generally parallels the aquifer boundary and ranges in elevation between 1200 and 1250 feet. It passes 1.8 miles west of the town of Roff, and continues northeast, approximately 5 miles where it turns southeast and terminates at a point 3 miles southeast of the community of Fitzhugh.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are

available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

V. Project Review

Projects with Federal financed assistance which are located in the designated area or in the streamflow source area will be subject to review for their potential to contaminate the aquifer.

EPA Region 6 will work with Federal agencies that in the future may provide financial assistance to the projects in the area of concern. Interagency procedures will be developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and where necessary conduct an in-depth review, including solicitation of public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer. Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible, on any existing or future state and local control mechanisms in protecting the ground water quality of the aquifer.

Included in the review of any Federal financially assisted project, will be coordination, as needed, with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary of Public Comments

Of the comments received at the public hearing and during the comment period, eight were in favor of designation, eight were opposed and three were undecided. Major issues raised by these comments are discussed below.

One commenter was concerned that designation would have a stifling effect on the local economy. EPA believes that the economic impacts resulting from designation will be minimal because relatively few projects should need review under the program and most

reviews will be conducted within the timeframes normally used for review by the lending agencies.

Several people commented that the designation would constitute a duplication of existing Federal, State, and local regulations. Although a number of ground water protection measures are available at the State and local level, none of these, either individually or collectively permit EPA to act as directly as would a sole source aquifer designation.

One commenter protested that designation would result in land use restrictions which would partially condemn the land. However, this will not be the case because the program involves only the use of Federal funds and because projects are evaluated on an individual basis. No activity is banned in a designated area and EPA cannot require that the land be used in any particular manner. Designation does not confer jurisdictional power over ground water to EPA. In fact, the only discretionary power EPA can exercise under section 1924(e) in a designated area is to block Federal funding for Federal financially assisted projects which might contaminate the aquifer.

Dated: September 13, 1989.

Robert E. Layton Jr.,

Regional Administrator, Region 6.

[FR Doc. 89-22580 Filed 9-22-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Winfas of Fayetteville, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Winfas of Fayetteville, Inc., Hope Mills, NC.	BPH-870819MF	89-388
B. Dr. James E. Carson, Hope Mills, NC.	BPH-870819MJ	
C. John Gilmer Dawson DBA Genesis Communications, Hope Mills, NC.	BPH-870819ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its

entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, C
2. Comparative, All Applicants
3. Ultimate, All Applicants

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 89-22601 Filed 9-22-89; 8:45 am]

BILLING CODE 6712-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholarships: Closing Date for Nominations From Eligible Institutions of Higher Education

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Pub. L. 93-642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR 1801, and were published in the Federal Register on June 19, 1976 (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, CN 6302, Princeton, NJ 08541-6302, postmarked no later than Friday, December 1, 1989.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 89-22582 Filed 9-22-89; 8:45 am]

BILLING CODE 9500-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Medical Classification Systems: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Subcommittee on Medical Classification Systems established pursuant to 42 U.S.C. 242K, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting and working session.

Name: NCVHS Subcommittee on Medical Classification Systems
Time and Date: 9 a.m.—5 p.m.—October 10, 1989 (Working Session for Staff and Subcommittee members to prepare for October 11 meeting. No public testimony will be taken.) 9 a.m.—5 p.m.—October 11, 1989

Place: October 10, 1989—Room 423A, October 11, 1989—Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to discuss the ICD-10 Revision Conference, status of copyright negotiations and other ICD-9 and ICD-10 issues.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland, telephone number (301) 436-7050.

Dated: September 19, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-22512 Filed 9-22-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Cincinnati District Office, chaired by Ruth Weisheit, Consumer Affairs

Officer. The topics to be discussed are proposed changes in food labeling.

DATES: Wednesday, September 27, 1989, 5 p.m. to 6:30 p.m.

ADDRESSES: St. Elizabeth Medical Center South, Conference Rm. H, One Medical Village Dr., Edgewood, KY 41017.

FOR FURTHER INFORMATION CONTACT: Ruth Weisheit, Consumer Affairs Officer, Food and Drug Administration, P.O. Box 838, 3820 Center Rd., Brunswick, OH 44212, 216-273-1038.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 19, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-22517 Filed 9-22-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, October 15-17, 1989, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public on October 15, from 7:00 p.m. to approximately 8:00 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 15, from approximately 8:00 p.m. to adjournment on October 17, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institute of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: September 13, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-22510 Filed 9-22-89; 8:45 am]

BILLING CODE 225-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-09-4320-02]

Meeting; Miles City District Advisory Council, Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with Public Law 92-463, a meeting of the Miles City District Advisory Council will meet Friday, October 13, at 8 a.m. The meeting will be held in the District Office Conference Room on Garryowen Road. The Council will hold election of Council officers and consider resolutions to be presented.

The Council will first gather October 12, at 10 a.m. in the District Conference Room for an orientation of new members. A field tour will begin at 1 p.m. to the Cherry Creek Dam Site, the Powder River Depot and the Ten Mile Riparian Site. The tour is open to the public, but their own transportation must be provided.

The meeting on October 13 is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending upon the number of persons wishing to make an oral statement, a per person time limit may

be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 89-22583 Filed 9-22-89; 8:45 am]

BILLING CODE 4310-DN-M

Realty Action; Direct Sale of Public Lands in Elko County, Nevada

The notice published in the *Federal Register* on Friday, January 27, 1989, Vol. 54, No. 17, Page 4093, identified 497.50 acres for direct sale to the City of Carlin under section 203 of the Federal Land Policy and Management Act of October 21, 1976. The sale of the land to the City of Carlin has not been consummated and the segregative effect is due to expire on October 27, 1989. This notice extends the segregation until July 27, 1990.

Dated: September 15, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-22504 Filed 9-22-89; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR parts 17 and 18).

File No. PRT 717318

Applicant's Name: Assistant Regional Director for Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Portland, OR

Type of Permit: Scientific Research
Name of Animals: Southern sea otter (*Enhydra lutris*)—up to 60 (20 per year)
Summary of Activity to be Authorized: The applicant proposes to

amend his current Marine Mammal/Threatened Species permit which presently authorizes capture and translocation of up to 70 independent, nonpregnant sea otters to San Nicholas Island each year for three years (through August 1992). These activities are directed toward establishment of a new population at the island in accordance with the California Sea Otter Recovery Plan.

The permittee is authorized to attach miniature external flipper tag radio transmitters to translocated otters in order to monitor movements of the animals for purposes of determining, among other things, whether they remain at the translocation site or whether they return to the mainland. The success of tracking animals with these external transmitters has been limited. Therefore, the permittee wishes to amend his permit to include the surgical implantation of intraperitoneal radio transmitters which are designed to transmit a stronger signal for approximately three years. The surgical procedure will be performed at the Monterey Bay Aquarium by an experienced veterinarian.

Source of Marine Mammals for Research: California

Period of Activity: 3 years (through August 1992)

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Arlington, VA 22203-3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 N. Fairfax Drive, Room 430, Arlington, VA.

Dated: September 20, 1989

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89-22575 Filed 9-22-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Reclamation

[DES 89-19]

Continued Development of the Columbia Basin Project, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings on draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation, has prepared a draft environmental impact statement (DEIS) on the proposed Continued Development of the Columbia Basin Project. The DEIS describes and presents the environmental effects of three alternatives, including no action, for continuing the development of irrigated agriculture potential in the Columbia Basin Project area in eastern Washington. A public hearing will be held, in four sessions, to receive comments from interested organizations and individuals on the environmental impacts of the proposal.

DATES: A 90-day public review period commences with the publication of this notice. Within that review period, written comments on the DEIS may be submitted to the Regional Director, Pacific Northwest Region, Bureau of Reclamation, at the address provided below.

Public hearings on the DEIS will be held on the following dates at the locations indicated. Address requests to speak at the hearings to the Regional Director, Pacific Northwest Region, at the address provided on the following page.

Session 1: Monday, November 27, 1989; Franklin County PUD, Auditorium, 1411 West Clark, Pasco, Washington; 7:30 p.m.

Session 2: Tuesday, November 28, 1989; Big Bend Community College, Student Center, Chanute Street and 28th Avenue, Moses Lake, Washington; 7:30 p.m.

Session 3: Wednesday, November 29, 1989; Cavanaugh's River Inn, Shoreline B Room, North 700 Division, Spokane, Washington; 7:30 p.m.

Session 4: Thursday, November 30, 1989; Seattle Center, Mercer Forum VII, Seattle, Washington; 7:30 p.m.

ADDRESSES: Copies of the DEIS may be requested from Reclamation's Pacific Northwest Regional Office or Columbia Basin Project Office at the following addresses:

Regional Director, Bureau of Reclamation, Attention: PN-150, Box 043, 550 West Fort Street, Boise ID 83724; Telephone: (208) 334-1207.

Project Manager, Columbia Basin Project Office, Bureau of Reclamation, PO Box 815, Ephrata WA 98823; Telephone: (509) 754-0209.

Copies of the DEIS are available for inspection at the addresses above and also at the following locations:

Office of the Commissioner, Bureau of Reclamation, Environment and Planning Branch, 18th and C Street, NW., Room 7455, Washington, DC 20240; Telephone: (202) 343-4662.

Denver Office, Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver CO 80225; Telephone: (303) 236-6963.

Libraries: Copies will also be available for inspection at libraries in the project vicinity.

FOR FURTHER INFORMATION CONTACT:

Douglas James (Regional Environmental Officer, Pacific Northwest Region), (208) 334-1207; Cline Street (Project Environmentalist, Columbia Basin Project Office), (509) 754-0209; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The Columbia Basin Project is a multiple-purpose project located in east-central Washington. The project is authorized to provide irrigation to 1,095,000 irrigable acres. Distribution facilities have been completed to provide irrigation water to about 556,500 acres.

The DEIS evaluates the effects of providing irrigation water to Columbia Basin Project lands not yet served. Three alternatives, including no action, are considered in the draft statement. The two action alternatives are: (1) complete the Columbia Basin Project as authorized by providing irrigation service to an additional 538,600 acres in phases, with the first phase to serve 172,900 acres over a 14-year period and a future phase to serve the remaining 365,700 over a subsequent 24-year period; and (2) expand the Project on a more limited scale by providing irrigation service to approximately 87,000 acres of land east of the existing East Low Canal over a 5-year period. Alternative 2 is the proposed action.

The principal environmental consequences that would result from Alternatives 1 and 2 include: increased crop diversification and production, expanded fish and wildlife resources and recreational opportunities, economic stability and growth, and increased diversions from the Columbia

River. Increased diversions would affect the energy-generating capability at the dams and the flexibility to operate the river to benefit anadromous fisheries. The magnitude of these effects is substantially less for Alternative 2 than for Alternative 1.

Hearing Process Information

Those wishing to request time to make comments prior to the hearing dates should write or call the Bureau of Reclamation Regional Office in Boise, Idaho. The address and telephone number are listed on the previous page. Requests should be received on or before November 22, 1989, and should indicate at which session the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which their requests were received by the Bureau of Reclamation. Requests to speak may also be made at each session and will be called after the advance requests. Oral comments will be limited to 10 minutes per individual. Written comments, for inclusion in the hearing record, from those unable to attend the hearing or wishing to supplement their oral presentation should be received at the Bureau of Reclamation Regional Office in Boise, Idaho, by December 11, 1989.

Dated: September 20, 1989.

J. Austin Burke,

Deputy Assistant Commissioner,
Administration.

[FR Doc. 89-22529 Filed 9-22-89; 8:45 am]

BILLING CODE 9310-09-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Digital Equipment Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on September 8, 1989, a Consent Decree in *United States v. Digital Equipment Corporation*, Civil Action No. 89-1233 was lodged with the United States District Court for the District of Puerto Rico. The Consent Decree requires the Defendant to pay a civil penalty of \$450,000, and to maintain compliance with the Clean Water Act and the Puerto Rico Aqueduct and Sewer Authority Rules and Regulations.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611,

Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Digital Equipment Corporation*, D.J. Ref. No. 90-5-1-1-3152.

The Consent Decree may be examined at the office of the United States Attorney, District of Puerto Rico, Federal Office Building, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico, 00918; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Richard B. Stewart,
Assistant Attorney General, Land and
Natural Resources Division.
[FR Doc. 89-22585 Filed 9-22-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-66]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATES: October 18, 1989, 8:30 a.m. to 5:15 p.m.; October 19, 1989, 8 a.m. to 5 p.m.; and October 20, 1989, 8 a.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 201, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide

overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Philip M. Condit, is comprised of 23 members. The Subcommittee is comprised of 43 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda

October 18, 1989

- 8:30 a.m.—Opening Remarks.
- 8:50 a.m.—Welcome/Center Overview by Center Director.
- 9:35 a.m.—Aeronautics Overview.
- 10:30 a.m.—Parallel Vehicle Program Overviews.
- 1 p.m.—Facility Tour.
- 2 p.m.—Wrap-up of Vehicle Program Overviews.
- 3:15 p.m.—Parallel Discipline Program Reviews.
- 5:15 p.m.—Adjourn.

October 19, 1989

- 8 a.m.—Discipline Program Reviews Continued.
- 1 p.m.—Facility Tour.
- 2 p.m.—Discipline Program Reviews Continued.
- 4:30 p.m.—Plenary Session.
- 5 p.m.—Adjourn.

October 20, 1989

- 8 a.m.—Opening Remarks.
- 8:20 a.m.—Update of Aeronautics and National Aerospace Plane Budget and Planning Issues.
- 8:45 a.m.—Discussion of Key Points from Aeronautics Advisory Committee/Aerospace Research and Technology Subcommittee Meeting.
- 10:30 a.m.—NASA Responses to Ad Hoc Team Recommendations.
- 1 p.m.—Discussion of Issues and Recommendations.
- 2 p.m.—Summary Session.
- 2:30 p.m.—Adjourn.

Dated: September 19, 1989.

Philip D. Waller,

Deputy Director, Management Operations
Office.

[FR Doc. 89-22516 Filed 9-22-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 25, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the *Federal Register* on July 17, 1989.

The applications received are as follows:

1. **Applicant:** David F. Parmelee, Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455.
Activity for Which Permit Requested: Taking import into USA. Enter specially protected area. The applicant is conducting demographic studies of birds in the

Palmer Station area. He requests permission to capture, examine previously attached bands, and release birds. Species to be taken are: American Shearwater (10), South Polar Skua (10), Brown Skua (6), Kelp Gull (6), Penguins (4), Petrels (6), Storm-Petrels (10), Waterfowl (4), Shorebirds (4), and Terns (10).

Location: Palmer station and vicinity, Antarctica. Litchfield Island SPA.

Dates: November-February 1990.

2. **Applicant:** Anne Granow, Lamont-Doherty Geological Observatory, Columbia University, Palisades, New York 10964.

Activity for which permit requested: Enter site of Special Scientific Interest. The applicant is conducting geological research and requests permission to enter Byers Peninsula SSSI to collect paleomagnetic rock sample cores.

Location: Byers Peninsula, Livingston Island SSSI.

Dates: December 1989-January 1990.

3. **Applicant:** Lowell E. Starr, U.S. Geological Survey, Reston, Virginia 22092.

Activity for which permit requested: Enter specially protected areas. Enter site of special scientific interest. The applicant proposes to enter protected areas for purposes of geodetic surveying. No specimens of any type will be taken from these areas.

Location: Arrival Heights, Ross Island SSSI; Beaufort Island SPA; Cape Hallett, Victoria Land SPA.

Dates: November 1989-January 1990.

4. **Applicant:** CDR. R. M. Harler, Detachment Christchurch, U.S. Naval Support Force, Antarctica, FPO San Francisco 96690-2900.

Activity for which permit requested: Introduction of non-indigenous species into Antarctica. The applicant proposes to introduce two dogs into Antarctica in support of the U.S. Navy drug interdiction program. Each deployment of a dog will be for a two to three day period to McMurdo Station, Antarctica.

Location: McMurdo Station, Antarctica.

Dates: October 1989-October 1991.

Charles E. Myers,
Permit Office.

[FR Doc. 89-22493 Filed 9-22-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR part 50, Appendix J, sections III.A.6(b), III.D.2(a), and III.D.3, to the Boston Edison Company (BECO/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action:

The licensee would be exempted from the requirements of 10 CFR part 50, Appendix J, section III.A.6(b) to the extent that a Type A Primary Containment Integrated Leak Rate Test (PCILRT) would not have to be performed during the Pilgrim Nuclear Power Station's (PNPS) upcoming surveillance outage scheduled for October 1989. Also, the normal PCILRT retest schedule specified in section III.D.1(a) of Appendix J would be restored.

In addition, the licensee would be exempted from the requirements of sections III.D.2(a) and III.D.3 to the extent that Type B and C Local Leak Rate Tests (LLRTs) would not be performed during the upcoming October 1989 outage, but would be allowed a one-time schedule extension of approximately six months for the following components:

1. Shutdown Cooling Isolation Valves MO-1001-47 and MO-1001-50 (Type C LLRTs)
2. Reactor Building Closed Cooling Water Isolation Valve MO-4002 on the line from the drywell and Check Valve 30-CK-432 on the line to the drywell (Type C LLRTs)
3. Drywell Head and Drywell Head Access Hatch (Type B LLRTs)

The Need for the Proposed Action:

The PCILRTs performed during the 1982, 1983, and 1987 refueling outages at the PNPS were deemed failures in the "as-found" condition due to leakage from the pathways of the Type B and C LLRTs. Section III.A.6(b) of Appendix J states that, should two consecutive PCILRTs fail to meet the applicable acceptance criteria, a retest must be performed during each subsequent refueling outage until two consecutive

tests are deemed acceptable, after which time the retest schedule specified in section III.D.1(a) may be resumed. Accordingly, the licensee would be required to perform a PCILRT during the surveillance outage scheduled for October 1989. As an alternative to performing the required test, the licensee has submitted a Corrective Action Plan in accordance with the guidance provided in NRC Information Notice 85-71, "Containment Integrated Leak Rate Tests", dated August 22, 1985.

The Corrective Action Plan includes a LLRT failure analysis team to investigate LLRT failures, determination of root causes, and recommend corrective actions. The plan also includes a trending program, test method improvements and augmented testing. It should be noted, that the major leakage (about 83%) of the LLRTs performed in December 1987, was due to the feedwater check valves. The short term replacement of problem components in the valves and the long term inspection and testing of the valves had been unsuccessful. However, in recent years, the licensee initiated a Valve Betterment Program which has resulted in the replacement of 17 valves and modifications to 12 other valves which were identified as having excessive leakage. These actions appear to have resolved the feedwater check valve leakage problem and leakage from other Type B and C components. The implementation of the Corrective Action Plan including augmented LLRTs and continued close trending of the Type B and C tests performed on all required penetrations, including the replaced and refurbished valves, should ensure the intent of 10 CFR 50, Appendix J, section III.A.6(b) is met in that unacceptable containment leakage is identified and corrected.

The schedule exemption for the Shutdown Cooling Suction Isolation valves is needed to defer the leak rate testing until the next scheduled refueling outage. The shutdown cooling system is the normal means of removing decay heat from the reactor vessel during short outages, such as the upcoming October 1989 surveillance outage.

The schedule exemption for the Reactor Building Closed Cooling Water (RBCCW) system isolation valves is needed because the testing would impact components cooled by the RBCCW system during the upcoming short outage. In addition, staging to provide access must be built and removed resulting in considerable exposure of workers to radiation. The water in the system is also required to

be drained and treated resulting in an increase in the production of radwaste.

The schedule exemption for the drywell head and the drywell head access hatch is needed due to the extent of the work needed to be performed and the resulting worker exposure to radiation. Nine shields blocks above the drywell must be removed. These are normally removed only during refueling outages to allow removal of the reactor head for fuel loading.

Environmental Impacts of the Proposed Action:

The proposed action of performing the Type A PCILRT during the next refueling outage (RFO-8) and then following a schedule in accordance with 10 CFR 50, Appendix J, section III.D.1(a), is based on the implementation of the Corrective Action Plan and continued trending of LLRTs. These actions would ensure that excessive leakage from containment isolation valves is identified and corrected. The proposed action would provide a level of safety at least equivalent to that attained by being in compliance with 10 CFR 50, Appendix J, section III.A.6(b).

The proposed action, in relation to the granting of a one-time schedule extension of approximately six months for performing the Type B or C LLRTs on the components previously discussed, is based on augmented LLRTs and the impact which would result if the tests were performed during the upcoming October 1989 outage. The length of the requested extension and the previous history of the components provides reasonable assurance that excessive leakage will not occur prior to the next tests which will be performed during RFO-8; and that there will be no significant changes in the types or amounts of effluents that may be released offsite.

The Commission has concluded, based on the above, that there are no significant radiological environmental impacts associated with the proposed exemptions, and in fact would reduce the amount of radwaste generated and reduce exposure of workers to radiation.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action:

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the applicable portions of sections III.A.6(b), III.D.2(a) and III.D.3 of the Appendix J requirements. Such action would not enhance the protection of the environment and would result as unjustified worker exposure and cost for the licensee.

Alternative Use of Resources:

This action does not involve the use of any resources not considered previously in the Final Environmental Statement related to the operation of Pilgrim Nuclear Power Station.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated July 7 and September 1, 1989. The letters are available for public inspection at the Commission's Public Document Room, Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland this 19th day of September 1989.

For the Nuclear Regulatory Commission,

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-22525 Filed 9-22-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498 and 50-499]

Houston Lighting & Power Co. et al.; Issuance of Amendment to Facility Operating License

In the matter of Houston Lighting & Power Co., City Public Service Board of San

Antonio, Central Power and Light Co., City of Austin, Texas.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 12 and 3 to Facility Operating License Nos. NPF-76 and NPF-80 issued to Houston Lighting & Power Company which consisted of changes to the Final Safety Analysis Report related to the operation of the South Texas Project, Units 1 and 2 located in Matagorda County, Texas.

The amendments are effective as of the date of issuance.

The amendments document the results of safety analyses that consider the effects of the reactor coolant system flow anomaly.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 15, 1989 (54 FR 25512). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendments dated April 18, 1989, (2) Amendment No. 12 to License No. NPF-76, Amendment No. 3 to License No. NPF-80 and (3) the Commission's related Safety Evaluation and Environmental assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 15th day of September 1989.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,
Project Manager, Project Directorate IV,
Division of Reactor Projects-III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-22526 Filed 9-22-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260, and 50-296]

Tennessee Valley Authority; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 171, 173 and 142 to Facility Operating License Nos. DPR-33, DPR-52 and DPR-68, respectively, issued to Tennessee Valley Authority (TVA or the licensee), which revised the Technical Specifications (TS) for operation of Browns Ferry Nuclear Plant, Units 1, 2 and 3, located in Limestone County, Alabama. The amendment is effective as of the date of issuance and shall be implemented within 30 days.

The amendment revises the TS to permit operation of Browns Ferry, Unit 2, for one cycle without all modifications to the Control Room Emergency Ventilation System (CREVS) completed.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 18, 1989 (54 FR 15572). The licensee's letter of July 14, 1989 provided clarification that the projected radiation doses to control room operators and Technical Support Center personnel were within the acceptable limit of 10 CFR part 50, Appendix A. No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) The application for amendment dated April 3, 1989 and supplemental letter dated July 14, 1989, (2) Amendment No. 173 to License No. DPR-52 (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room, Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 18th day of September 1989.

For the Nuclear Regulatory Commission.

Suzanne C. Black,
Assistant Director for Projects, TVA Projects
Division, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-22527 Filed 9-22-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27152; File No. SR-AMEX-89-05]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change on a Temporary Basis

On March 8, 1989, the American Stock Exchange, Inc. ("Amex") filed with the Commission a proposed rule change under the Securities Exchange Act of 1934 ("Act"). As discussed below, the proposal provides for the accelerated comparison of securities transactions. Notice of the proposal was published in the **Federal Register** on April 26, 1989, to solicit comments from interested persons.¹ No comments were received. This order approves the proposal.

I. Description of the Proposal

The rule change consists of proposed Amex Rule 719, which, in essence, would require that each regular way trade in stocks, rights, and warrants be compared or otherwise closed out by the close of business on the business day following the trade date (*i.e.*, T+1). Under existing Amex rules, such trades must be compared or closed out by T+5. Thus, the proposal, when implemented, would shorten a transaction's comparison cycle by four business days. The proposal, however, would have no effect on the settlement

¹ See Securities Exchange Act Release No. 26741 (April 18, 1989), 54 FR 18058.

of transactions, the majority of which would continue to settle on T+5.

Amex states in its filing that it has been working for more than a year with the New York Stock Exchange ("NYSE"),² the National Securities Clearing Corporation ("NSCC"),³ and the member firm community to establish the systems and rules necessary to implement T+1 comparison. Amex's proposed Rule 719 (which is an enabling rule, not a rule of implementation) directs Amex members and member organizations to comply with such other rules and procedures as may be adopted by Amex or NSCC for: (1) The comparison or settlement of transactions, (2) the resolution of uncompleted or questioned trades, and (3) the collection and submission of audit trail data.⁴ Amex also notes in its filing that its Rule 719, like NYSE Rule 130 (*i.e.*, NYSE's compare or close out rule), will require up to 18 months to implement fully, as measured from the date that the Commission approved the rule.

Amex has informed the Commission that it desires to commence a phase-in of accelerated trade comparison operations on Saturday, August 19, 1989. This would be in conjunction with an industry-wide effort, including NYSE and NSCC, to begin accelerated comparison on that date. Specifically, Amex intends to shorten by 24 hours (from T+3 to T+2) its trade comparison cycle and its trade correction cycle (primarily affecting trades executed two days previously on Thursday, August 17, 1989).⁵ Amex states, however, that its automated trade correction system will not be operational by August 19, 1989, and that, consequently, Amex will use an improved version of its existing

manual correction system, which has been modified to shorten its cycle by the necessary 24 hours.⁶

II. Rationale for the Proposal

Amex believes that the proposed rule change is consistent with the Act in that it would facilitate the prompt and accurate clearance and settlement of securities transactions. Moreover, Amex states in its filing that shortening the comparison cycle for regular-way equity trades to T+1 would improve the marketplace because it would increase the efficiency of the post-trade comparison process and reduce the time span its member organizations are exposed to the risk of market fluctuations on uncompleted trades.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission believes that the proposal, by shortening the comparison cycle for Amex equity trades, would benefit the marketplace by reducing the risk exposure to investors and to Amex members and by contributing to the prompt and efficient clearance and settlement of securities transactions.

The Commission reiterates that the proposed rule change is similar to an NYSE proposed rule change already approved by the Commission.⁷ For the reasons discussed in the order approving that NYSE proposal, the Commission believes that the instant proposal, upon implementation, would reduce the length of the processing cycle for Amex trades and, more specifically, make Amex's trades: (1) Safer with regard to the risks of market price volatility, and (2) more efficient in terms of the time and expense involved in trade processing. Further, the proposal would help protect investors and other persons that safeguard investors' funds and facilitate their transactions.

The Commission, nevertheless, is concerned that: (1) Amex has no

automated trade correction system yet in operation;⁸ and (2) Amex has not yet filed a rule proposal with the Commission regarding the implementation of accelerated comparison and an automated correction system. The Commission expects that Amex will file such implementing rules soon. The Commission is approving this proposed rule change now to enable Amex to take part in the industry-wide phase-in on August 19, 1989, and expects that, as a result of these operations, Amex will have the necessary knowledge to develop the implementing rules and procedures concerning T+1 comparison and automated trade correction. Accordingly, this approval order is effective on a temporary basis through December 31, 1989.⁹ Permanent approval of this proposal (*i.e.*, Amex Rule 719) will be conditioned on the filing and approval of implementing rules and procedures for accelerated comparison and automated trade correction as discussed above.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act that the above-mentioned proposed rule change (File No. SR-Amex-89-05) be, and hereby is, approved on a temporary basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 18, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22534 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

² The Commission already has approved a parallel NYSE rule filing. See Securities Exchange Act Release No. 28627 (March 14, 1989), 54 FR 11470 (File No. SR-NYSE-88-36).

³ For the NSCC's companion rule filing to NYSE Rule 130 and proposed Amex Rule 719, a filing recently approved by the Commission, see Securities Exchange Act Release No. 27074 (July 28, 1989), 54 FR 32405 (File No. SR-NSCC-89-04). See also, Securities Exchange Act Release No. 26763 (May 4, 1989), 54 FR 20221 (File No. SR-NSCC-89-02).

⁴ Amex has advised the Commission that it plans to adopt a series of procedures within the general framework of Rule 719 whereby the implementation of Rule 719 would be carried forward. Telephone conversation between Paul G. Stevens, Executive Vice President for Operations, Amex, and Thomas C. Etter, Attorney, SEC (June 16, 1989).

⁵ Telephone conversation between George Stokes, Assistant Vice President, Amex, and Thomas C. Etter, Attorney, SEC (August 16, 1989). See Amex Information Circular, No. 89-131, dated August 15, 1989; NSCC Important Notice, No. A3218, dated July 18, 1989.

⁶ Telephone conversation between George Stokes, Assistant Vice President, Amex, and Thomas C. Etter, Attorney, SEC (August 16, 1989). See NSCC Important Notice, No. A3218, dated July 18, 1989.

⁷ See, *supra*, note 2.

⁸ Section 17A(a)(1) of the Act expressly contemplates the goal of prompt and efficient clearance and settlement of securities transactions (including the comparison of securities transactions) and the use of automated systems to achieve that goal. The Commission regards T+1 automated trade comparison as an important interim step toward the longer-term goal of same-day trade comparison and views automated trade resolution as a necessary component of accelerated trade comparison. Moreover, this is not a matter of first impression. NASDAQ, Inc., with Commission approval, has been using its automated Trade

Acceptance and Resolution System ("TARS") since 1986. TARS, like the NYSE's On-Line Correction System, is an electronic facility that permits subscribers, using terminal screens, to resolve uncompleted trades. See NASD Market Services, Inc., *Trade Acceptance and Reconciliation Service User Guide* (May 20, 1986).

⁹ Amex has agreed to submit monthly reports to the Commission concerning the operations of Amex Rule 719. Also, Amex has agreed to provide written notice to the Commission upon the implementation of an automated trade correction system. Telephone conversation between Paul Stevens, Executive Vice President, Amex, and Brandon Becker, Associate Director, SEC (August 16, 1989).

[Release No. 34-27250; File No. SR-NASD-89-32]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Approving
Proposed Rule Change Relating To
Study Outline and Specifications for
the General Securities Principal (Series
24) Examination**

The National Association of Securities Dealers, Inc. ("NASD") submitted the proposed rule change on July 12, 1989 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, to revise the examination for general securities principal to reflect new materials pertaining to recent developments regarding Commission, NASD and other self-regulatory organization rules.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 27073, July 28, 1989) and by the publication in the Federal Register (54 FR 32404, August 7, 1989). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder. Specifically, the proposed rule change meets the requirements of section 15A(g)(3)(B) which permits the NASD to "examine and verify the qualifications of an applicant to become a person associated with a member."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-89-32, be, and hereby is, approved, effective January 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 15, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22535 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17138; 811-1527]

Application: Charter Fund, Inc.

September 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Charter Fund, Inc.

Relevant 1940 Act section: Section 8(f) and Rule 8f-1 thereunder.

Summary of application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing dates: The application was filed on July 11, 1989, and amended on September 1, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 11 Greenway Plaza, Suite 1919, Houston, TX 77046.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Max Berueffy, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's representations:

1. On August 28, 1967, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On September 21, 1967, Applicant filed Form S-5 pursuant to the Securities Act of 1933, and commenced the initial public offering of Applicant's shares. Applicant is organized as a Texas corporation, and intends to file a certificate of dissolution with the State of Texas.

2. On May 24, 1988, Applicant's Board of Directors approved its Agreement and Plan of Merger (the "Plan") and recommended its submission to Applicant's shareholders. Proxy materials were submitted on or about

July 22, 1988 and on or about September 2, 1988 to Applicant's shareholders of record on July 6, 1988. On September 30, 1988, at a meeting of shareholders called for that purpose, Applicant's shareholders approved the Plan by a vote of 66% percent of the outstanding shares. Pursuant to the Plan, on September 30, 1988, Applicant transferred all of its assets to AIM Equity Funds, Inc. ("Fund"). The Fund is registered as a management investment company under the 1940 Act (File No. 811-1424). Simultaneously therewith, The Constellation Growth Fund, Inc. ("Constellation") and Weingarten Equity Fund, Inc. ("Weingarten"), management investment companies registered under the 1940 Act, (File Nos. 811-1451 and 811-1424, respectively) transferred all their assets to the Fund.

3. In exchange for their interests in Applicant, the shareholders of Applicant received equivalent interests in a new series of shares of the Fund, currently known as AIM Charter Fund. The shareholders of Constellation and Weingarten also received equivalent interests in the Fund in exchange for their interests. In a separate vote, the shareholders of the Applicant approved a change in the fundamental policies of the Fund so as to permit the Fund to increase the limits on its ability to borrow from banks and to make pledges to secure such borrowings. Also, incidental to the merger, the shareholders of Applicant approved, for the Fund, new arrangements for the provision of investment advisory and administrative services, the election of directors and the selection of the auditors.

4. At the time of the merger, Applicant had outstanding 13,240,976 shares of common stock with a total net asset value of \$70,103,611. The exchange of the Applicant's assets for the equivalent interest in the Fund constituted an even exchange at fair market value. No brokerage commissions were paid in connection with the merger. All \$67,357 of expenses incurred in connection with the merger were paid by the Applicant. These included \$32,423 of proxy solicitation fees, \$22,248 of printing fees, \$3,558 of legal fees and \$9,128 of other expenses.

5. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22530 Filed 9-22-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel No. IC-17142; 812-7324]

Application; College and University Facility Loan Trust Two

September 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The First National Bank of Boston, not in its individual capacity, but solely as trustee ("Applicant" or "Owner Trustee"), on behalf of the College and University Facility Loan Trust Two ("Trust").

Relevant 1940 act sections: Exemption requested under section 6(c) from the provisions of Rule 8b-16, promulgated under section 8(b) of the 1940 Act.

Summary of application: The Applicant, serving as Owner Trustee on behalf of the Trust, seeks an order amending the order issued in connection with the United States Government Loan Asset Sales Program in Investment Company Act Release No. 16366 (April 14, 1988). The amended order would include an additional exception from the requirement that the Trust file an annual amendment to its Registration Statement on Form N-2.

Filing date: The application was filed on May 19, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicant in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Kathleen A. McGill, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272-3033 or Branch Chief Karen L. Skidmore (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's representations:

1. The Trust, a Massachusetts business trust, is registered as a closed-end management investment company under the 1940 Act. By order dated April 14, 1988 (Investment Company Act Release No. 16366) ("Prior Order"), the Trust was exempted pursuant to Section 6(c) from the provisions of sections 10(h), 14(a), 16(a), 17(a), 18(a), (c) and (i) and 32(a) of the 1940 Act in connection with the issuance of bonds and senior and junior certificates of beneficial interest in the Trust collateralized by certain loans originated by the United States Department of Education.

2. The Trust is a passive entity similar to a unit investment trust. The activities of the Owner Trustee are limited to receiving payments from the bond trustee while the bonds are outstanding and payments on the loans thereafter, and to making current distributions to certificateholders of the amounts received. Under the Prior Order, the Owner Trustee complies with section 26 of the 1940 Act (with certain exceptions) as if the Trust were a unit investment trust. The Trust is not issuing, nor is it permitted to issue, additional securities in any public offering.

3. The Applicant seeks to amend the Prior Order to obtain an additional exemption from Rule 8b-16 under section 8(b) of the 1940 Act. Rule 8b-16 provides in relevant part that a registered management company which is required to file a semi-annual report on Form N-SAR, as prescribed by Rule 30b1-3, must amend the registration statement required under section 8(b) by filing the appropriate form prescribed for such amendments not more than 120 days after the close of each fiscal year ending on or after the date upon which the registration statement was filed.

Applicant's legal conclusions:

4. The Applicant states that the concerns of Rule 8b-16 are fully satisfied as a result of other filings and reports required to be made by the trust. Financial statements of the Trust are currently sent to the Commission and to the certificateholders of the Trust pursuant to the rules and regulations

promulgated under section 30 of the 1940 Act. In addition, holders of the bonds issued by the Trust receive financial reports from the bond trustee. Thus, the requested exemption is consistent with the protection of investors because it would not result in withholding any information from investors that they do not already receive on a routine basis. Further, the preparation of annual amendments to the Registration Statement of the Trust on Form N-2 would impose an unnecessary burden of additional administrative and legal expenses which would be borne by the certificateholders with no countervailing benefits. Lastly, unit investment trusts are not subject to the requirement of Rule 8b-16 that annual amendments be filed to registration statements. For these reasons the Applicant states that the requested exemption is necessary and appropriate in the public interest and is consistent with purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22531 Filed 9-22-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel No. IC-17140; 812-7323]

Application; College and University Facility Loan Trust One

September 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The First National Bank of Boston, not in its individual capacity, but solely as trustee ("Applicant" or "Owner Trustee"), on behalf of the College and University Facility Loan Trust One ("Trust").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of Rule 8b-16 under section 8(b) of the 1940 Act.

Summary of Application: The Applicant, serving as Owner Trustee on behalf of the Trust, seeks an order amending the order issued in connection with the United States Government Loan Asset Sales Program in Investment Company Act Release No. 15990 (September 18, 1987). The amended order would include an additional exemption from the requirement that the

Trust file an annual amendment to its Registration Statement on Form N-2.

Filing Date: The application was filed on May 19, 1989.

Hearing or Notification of Hearing:

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicant in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Kathleen A. McGill, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272-3033 or Branch Chief Karen L. Skidmore (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. The Trust, a Massachusetts business trust, is registered as a closed-end management investment company under the 1940 Act. By order dated September 18, 1987 (Investment Company Act Release No. 15990) ("Prior Order"), the Trust was exempted pursuant to section 6(c) from the provisions of sections 10(h), 14(a), 16(a), 17(a), 18(a), (c) and (i), and 32(a) of the 1940 Act in connection with the issuances of bonds and senior and junior certificates of beneficial interest in the Trust collateralized by certain loans originated by the United States Department of Education.

2. The Trust is a passive entity similar to a unit investment trust. The activities of the Owner Trustee are limited to receiving payments from the bond trustee while the bonds are outstanding and payments on the loans thereafter, and to making current distributions to certificateholders of the amounts received. Under the Prior Order, the

Owner Trustee complies with section 26 of the 1940 Act (with certain exceptions) as if the Trust were a unit investment trust. The Trust is not issuing, nor is it permitted to issue, additional securities in any public offering.

3. The Applicant seeks to amend the Prior Order to obtain an additional exemption from Rule 8b-16 under section 8(b) of the 1940 Act. Rule 8b-16 provides in relevant part that a registered management company which is required to file a semi-annual report on Form N-SAR, as prescribed by Rule 30b1-3, must amend the registration statement required under section 8(b) by filing the appropriate form prescribed for such amendments not more than 120 days after the close of each fiscal year ending on or after the date upon which the registration statement was filed.

Applicant's Legal Conclusions:

4. The Applicant states that the concerns of Rule 8b-16 are fully satisfied as a result of other filings and reports required to be made by the Trust. Financial statements of the Trust are currently sent to the Commission and to the certificateholders of the Trust pursuant to the rules and regulations promulgated under section 30 of the 1940 Act. In addition, holders of the bonds issued by the Trust receive financial reports from the bond trustee. Thus, the requested exemption is consistent with the protection of investors because it would not result in withholding any information from investors that they do not already receive on a routine basis. Further, the preparation of annual amendments to the Registration Statement of the Trust on Form N-2 would impose an unnecessary burden of additional administrative and legal expenses which would be borne by the certificateholders with no countervailing benefits. Lastly, unit investment trusts are not subject to the requirement of Rule 8b-16 that annual amendments be filed to registration statements. For these reasons, the Applicant states that the requested exemption is necessary and appropriate in the public interest and is consistent with purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22532 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17139; 811-1451]

Application; The Constellation Growth Fund, Inc.

September 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Constellation Growth Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f) and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 11, 1989, and amended on September 1, 1989.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 11 Greenway Plaza, Suite 1919, Houston, TX 77046.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Max Berueffy, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

APPLICANT'S REPRESENTATIONS:

1. On December 14, 1966, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On December 14, 1966, Applicant also filed Form S-5 pursuant to the Securities Act of 1933, and commenced the initial public offering of Applicant's shares. Applicant is organized as a Maryland

corporation, and intends to file a certificate of dissolution with the State of Maryland.

2. On May 24, 1988, Applicant's Board of Directors approved its Agreement and Plan of Merger (the "Plan") and recommended its submission to Applicant's shareholders. Proxy materials were submitted on or about July 22, 1988 and on or about September 2, 1988 to Applicant's shareholders of record on July 6, 1988. On September 30, 1988, at a meeting of shareholders called for that purpose, a majority of Applicant's shareholders approved the Plan. Pursuant to the Plan, on September 30, 1988, Applicant transferred all of its assets to AIM Equity Funds, Inc. ("Fund"). The Fund is registered as a management investment company under the 1940 Act (File No. 811-1424). Simultaneously therewith, Charter Fund, Inc. ("Charter") and Weingarten Equity Fund, Inc. ("Weingarten"), management investment companies registered under the 1940 Act, (File Nos. 811-1527 and 811-1424, respectively) transferred all their assets to the Fund.

3. In exchange for their interests in Applicant, the shareholders of Applicant received equivalent interests in a new series of shares of the Fund, currently known as AIM Constellation Fund. The shareholders of Charter and Weingarten also received equivalent interests in the Fund in exchange for their interests. In a separate vote, the shareholders of the Applicant approved a change in the classification of the Fund from a "non-diversified" investment company to a "diversified" investment company. Also, incidental to the merger, the shareholders of Applicant approved, for the Fund, new arrangements for the provision of investment advisory and administrative services, a Rule 12b-1 distribution plan, the election of directors and the selection of the auditors.

4. At the time of the merger, Applicant had outstanding 12,971,769 shares of common stock with a total net asset value of \$102,818,073. The exchange of the Applicant's assets for the equivalent interest in the Fund constituted an even exchange at fair market value. No brokerage commissions were paid in connection with the merger. All \$55,836 of expenses incurred in connection with the merger were paid by the Applicant. These included \$20,194 of proxy solicitation fees, \$23,756 of printing fees, \$2,902 of legal fees and \$8,784 of other expenses.

5. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any

business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22533 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17137; File No. 812-7345]

Kemper Investors Life Insurance Co., et al.

September 15, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Kemper Investors Life Insurance Company ("KILICO"), KILICO Variable Separate Account, KILICO Money Market Separate Account ("Money Market Account"), KILICO Total Return Separate Account ("Total Return Account"), KILICO Income Separate Account ("Income Account"), KILICO Equity Separate Account ("Equity Account"), Kemper Investors Fund ("Fund") and Kemper Financial Services, Inc. ("KFS") (collectively, the "Applicants").

Relevant 1940 Act Sections: An Order is requested (1) exempting Applicants from the provisions of section 17(a) and granting the necessary approvals under section 17(d) of the 1940 Act and Rule 17d-1 thereunder, pursuant to sections 17(b) and 17(d) of the 1940 Act and Rule 17d-1 thereunder; and (2) pursuant to section 6(c) of the 1940 Act exempting certain life insurance companies and variable life insurance separate accounts from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6(e)-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an Order: (1) To permit the assets of the Money Market, Total Return, Income and Equity Accounts to be combined into one separate account ("KILICO Variable Annuity Separate Account") that is restructured as a unit investment trust investing in shares of the Fund, with the simultaneous issuance of shares of the Fund to the KILICO Variable Annuity Separate Account in exchange for all the assets and liabilities of the separate account (the "Reorganization"); and (2) to permit shares of the Fund to be sold and held by variable annuity and variable life insurance separate accountants of both

affiliated and unaffiliated life insurance companies.

Filing Date: The Application was filed on June 26, 1989, and amended on September 5, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 10, 1989. You may request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Robert J. Engling, Kemper Investors Life Insurance Company, 120 South LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

The Reorganization

1. KILICO, a stock life insurance company organized under the laws of the State of Illinois, is a wholly-owned subsidiary of Kemper Financial Companies, Inc. ("KFC") which is a subsidiary of Kemper Corporation, a diversified insurance and financial services holding company. KILICO serves as investment adviser to the Money Market Account, Total Return Account, Income Account and Equity Account (collectively, the "Accounts").

2. The Accounts were established pursuant to the insurance laws of the State of Illinois. Each Account is registered as an open-end diversified management investment company under the 1940 Act. The Accounts fund benefits under certain variable annuity contracts (the "Contracts") issued and administered by KILICO which may or

may not qualify for federal tax advantages under the Internal Revenue Code of 1986, as amended.

3. KILICO Variable Separate Account is registered as a unit investment trust under the 1940 Act. KILICO Variable Separate Account funds benefits under certain variable life insurance policies (the "Policies") issued and administered by KILICO, and may receive and invest premiums for other variable life insurance policies issued by KILICO. KILICO Variable Separate Account is currently divided into five sub-accounts. Each sub-account invests exclusively in shares of one of the five portfolios of the Fund.

4. The Fund is registered with the Commission as an open-end, diversified management investment company under the 1940 Act. The Fund is intended to be the funding vehicle for variable life insurance contracts and variable annuity contracts to be offered by the separate accounts of certain life insurance companies that are affiliated or unaffiliated with Kemper Corporation. The Fund's shares are currently available only to KILICO Variable Separate Account. The Fund is a series fund currently consisting of a Money Market Portfolio, Total Return Portfolio, High Yield Portfolio, Equity Portfolio and a Government Securities Portfolio (the "Existing Portfolios"). KFS is the investment adviser and principal underwriter for the Existing Portfolios of the Fund. Each portfolio of the Fund pays its respective fees and expenses.

5. KFS is registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934. In addition to acting as the investment adviser for the Existing Portfolios of the Fund, KFS provides investment advice and manages investment portfolios for the Kemper Corporation insurance companies and other accounts, and acts as investment adviser for other investment companies. KFS also acts as principal underwriter for the Fund, for such other investment companies, for KILICO Variable Separate Account and for the Accounts.

6. Applicants obtained exemptive relief from the terms of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act with respect to the charge under the Contracts for mortality and expense risks assessed by KILICO against the Accounts. [Investment Company Act Release No. 12204 (Jan. 29, 1982) (Notice); Investment Company Act Release No. 12262 (March 2, 1982) (Order)]. Applicants will rely upon such relief with regard to the charge under the Contracts for mortality and expense risks to be assessed by KILICO against

KILICO Variable Annuity Separate Account after the Reorganization and, therefore, are not seeking relief for these charges in the application.

KILICO has undertaken to reimburse each Account whose operating expenses, excluding taxes, extraordinary expenses and brokerage or transaction costs, and excluding mortality and expense risk and administrative cost fees payable to KILICO, exceed .80% of average daily net assets ("Expense Reimbursement").

8. KILICO's Board of Directors, each of the Account's Board of Managers and the Board of the Fund adopted resolutions authorizing the Reorganization and all other actions necessary to restructure and combine the Accounts into a single separate account organized as a unit investment trust investing in the Fund. Pursuant to those resolutions, an Agreement and Plan of Reorganization ("Agreement") will be entered into among KILICO, each of the Accounts, the Fund and KILICO Variable Separate Account, subject to the approval of Contract Owners.

9. Subject to the terms and conditions of the Reorganization, as set forth in the Agreement, and the approval of Contract Owners, as of the "Effective Time" of the Reorganization, KILICO, on behalf of the Accounts, will sell, assign and transfer all of each Account's portfolio assets to the corresponding portfolio of the Fund. Each Existing Portfolio will assume all unsatisfied liabilities incurred by the corresponding Account before the Effective Time. Simultaneously therewith, KILICO proposes to restructure the Money Market Account as a unit investment trust registered under the 1940 Act. The Money Market Account will be the continuing unit investment trust separate account (renamed "KILICO Variable Annuity Separate Account"), with the Total Return Account, Income Account and Equity Account continuing as sub-accounts thereof. In exchange for the portfolio assets of each of the Accounts, the Fund will issue full and fractional shares of its corresponding Existing Portfolio. The number of shares of the applicable Existing Portfolio to be issued to the corresponding sub-account of the KILICO Variable Annuity Separate Account shall be that number which, based on the relative net asset values per share of each Existing Portfolio, has an aggregate net asset value equal to the portfolio assets minus the related liabilities of the respective Account, each value being determined as of the close of business of the business day preceding the Reorganization. At the Effective Time,

KILICO shall cause the shares it receives from the Fund to be duly and validly recorded and held on its records as the assets of the newly-created sub-accounts of the KILICO Variable Annuity Separate Account. A Contract Owner's interest in a sub-account will then be equal to its former interest in the particular Account.

10. Applicants state that the economic interests of Contract Owners will, in all material respects, remain the same since the Reorganization essentially will result in a change in the form of a Contract Owner's interest, not in the substance of that interest. Applicants represent that the investment objectives, policies and restrictions of the Fund's Existing Portfolios are substantially the same as those of the Accounts and the investment management fees charged to the Fund will not result in any increase in the investment management fees, currently charged by KILICO, to the corresponding existing Account. If the Reorganization is approved by Contract Owners, certain of the costs and expenses under the Contracts will not continue to be charged to the KILICO Variable Annuity Separate Account. Because the four Accounts will become part of a single unit investment trust, expenses that were borne separately by each Account in the past will be incurred by the Fund as a whole. Expenses will generally be allocated among the various Existing Portfolios of the Fund in proportion to their respective net assets, unless allocations of direct expenses can otherwise be fairly made. KFS also currently absorbs certain expenses of the Existing Portfolios. There is no arrangement between the Fund and KFS whereby such absorption will continue in future periods. Applicants represent that continuing reimbursements, if any, will be allocated in a corresponding manner. Applicants state that with respect to KILICO's Contracts issued prior to the Effective Time, no investment advisory or other expenses shall be charged against the corresponding Existing Portfolios of a type or in an amount which would not have been charged against the Accounts had the Reorganization not occurred, unless such expenses are reimbursed by KILICO. Thus, KILICO will continue to absorb the excess of operating expenses that exceed .80% of average daily net assets with regard to contracts issued prior to the Effective Time. Such reimbursement shall not apply to any federal income tax if the Fund fails to qualify as a "regulated investment company" under the applicable provisions of the Code.

11. Contract Owners currently have voting privileges with respect to each of the Accounts in which they have an interest. Applicants represent that following the Reorganization, the Contract Owners' interests in the Accounts will continue as units of KILICO Variable Annuity Separate Account. Applicants state that although as a unit investment trust, KILICO Variable Annuity Separate Account does not hold shareholder meetings, Contract Owners will have the opportunity to instruct KILICO as to the voting of Fund shares, attributable to their respective interests under the Contracts, on matters as to which they currently have a voting privilege. KILICO will assign voting instruction rights separately for each sub-account based on each Contract Owner's proportionate interest in KILICO Variable Annuity Separate Account. Applicants represent that shares of the Fund held by KILICO Variable Annuity Separate Account that are not attributable to Contract Owners or for which instructions have not been received will be voted in the same proportionate manner as the instructions received from Contract Owners. Inherent differences between a unit investment trust separate account investing in a series fund and a management separate account will result in somewhat different computations of quorums and voting by the Contract Owners after the Reorganization. Applicant does not expect, however, that these differences will, as a practical matter, diminish a Contract Owner's existing voting privileges.

2. KILICO will bear all expenses incurred in connection with effecting the Reorganization, including, without limitation, expenses incurred in connection with the preparation and filing of registration statements, proxy statements, applications and amendments on behalf of any and all parties hereto, and all legal, accounting and data processing services.

13. Applicants represent that the terms of the proposed Reorganization are reasonable and fair (including the consideration to be paid and received), do not involve overreaching, are consistent with the investment policies of each of the Accounts and the Fund, and are consistent with the general purposes of the 1940 Act. Applicants represent that the proposed transactions do not present any of the issues or abuses that the 1940 Act was designed to prevent. Moreover, Applicants submit that the proposed transactions will be effected in a manner consistent with the

public interest and the protection of investors. Applicants expect that the Reorganization will benefit KILICO, the Accounts and KILICO Variable Separate Account by reducing costs through administrative efficiencies, economies of scale and less complex business recordkeeping. Additionally, KILICO, the Accounts and KILICO Variable Separate Account will benefit by spreading the expected reduced expenses over a larger asset base. Moreover, existing and future Contract Owners and Policy Owners with interests in the Fund are expected to benefit to the extent that, as a result of the transactions, common management of a larger asset base will tend to facilitate maximum investment flexibility and return and increase the possibility that additional investment portfolios may be added in the future.

14. Applicants represent that the transfer of portfolio assets of KILICO Variable Annuity Separate Account in return for shares of the corresponding Existing Portfolios of the Fund will be effected in conformity with section 22(c) of the 1940 Act and Rule 22c-1 thereunder.

15. The transactions will not require liquidation of any assets of any of the Accounts because of the identity of investment objectives of the Accounts and Existing Portfolios. Therefore, neither the Accounts nor the Existing Portfolios will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. KILICO believes, based on its review of existing federal income tax laws and regulations, that the transfer of assets and the combination of the Accounts will be tax-free events, with no tax effect on the Contract Owners.

16. The Reorganization is consistent with the Accounts' Rules and Regulations and current prospectuses specifying the rights of KILICO to amend the Contract at any time for tax reasons or for other purposes. In addition, the Fund's prospectus notes that the Fund anticipates selling its shares to separate accounts funding variable annuity contracts of insurance companies affiliated and unaffiliated with KILICO. Contract Owners and Policy Owners will be fully informed of the terms of the Reorganization through the proxy materials and Contract Owners will have an opportunity to approve or disapprove the Reorganization at the special meeting called for that purpose.

17. Applicants submit that the participation of each of the Accounts, KILICO Variable Separate Account and the Fund in the Agreement will be on an

equal basis and will not result in advantages to any one of the Accounts, KILICO Variable Separate Account or the Fund to the detriment of any other party. Each of the Accounts and KILICO Variable Separate Account will be similarly affected by the transactions, the terms of which are fair and reasonable and consistent with the provisions, policies and purposes of the 1940 Act. Applicants believe that the proposed Reorganization will result in overall benefits to KILICO, the Accounts, and the Fund, and that no benefits will inure to any one party to the detriment of any other.

18. Based on the above and as more fully described in the application, Applicants represent that the terms of the Agreement and the related transactions meet all of the requirements of sections 17(b) and 17(d) of the Act and Rule 17d-1 thereunder, and that an order should be granted exempting the proposed Reorganization from the provisions of section 17(a), and granting the necessary approvals under section 17(d) of the 1940 Act and Rule 17d-1 thereunder.

Mixed and Shared Funding

19. The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding." Applicants request an exemption for certain life insurance companies and variable life insurance separate accounts (and, to the extent necessary, the investment advisor and any principal underwriter and depositor of such accounts) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e-2(b)(15) thereunder, to the extent necessary to permit mixed and shared funding.

20. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in

the management of the underlying management company.

21. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9 effectively limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants believe it is unnecessary to apply section 9(a) to the many thousands of individuals who are employed by various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts, but who play no role in the management or administration of the Fund.

22. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemptions from sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account.

23. Rules 6e-2(b)(15)(iii) provide exemptions from the pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

24. Applicant represents that shared funding by unaffiliated insurance companies does not present any issues that do not already exist under the Rules whereby a single insurance company that is licensed to do business in several or all states can rely on the exemptive relief regarding pass-through voting. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem. Under Rules 6e-2(b)(15) and 6e-3(T)(b)(15), an insurer can disregard policyowner voting instructions only with respect to certain specified items. Applicants submit that affiliation does not eliminate the potential, if any exists, of divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by policyowners. The potential for disagreement is limited by the requirement in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. Nevertheless, a particular insurer's disregard of voting instructions could conflict with the majority of policyowner voting instructions. If the insurer's judgment represents a minority position or would

preclude a majority vote, the insurer will be required to withdraw its separate account's investment in the Fund. This requirement will be provided for in the agreement entered into with respect to participation in the Fund.

25. Applicant represents that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts. Applicant states that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in greater product variation and lower charges. Additionally, mixed and shared funding should benefit owners of variable contracts by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Fund. This may benefit owners of variable contracts by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios of the Fund more feasible.

Applicants' Conditions

If the requested Order is granted, Applicants agree to the following conditions:

1. A majority of the Board of Trustees of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Trustees; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund's Board of Trustees will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund.

3. Participating insurance companies and the Fund's investment adviser shall report any potential or existing conflicts to the Board of Trustees of the Fund. Participating insurance companies and the Fund's investment adviser will be responsible for assisting the Fund's Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any

issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever voting instructions of contract owners are disregarded and on all other matters referred to in this application as conditions. The responsibility to report such information and conflicts and to assist the Fund's Board of Trustees will be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund, and such agreements shall provide that such responsibility will be carried out with a view only to the interests of the contract owners.

4. When it is determined by a majority of the Fund's Board of Trustees or a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant participating insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, which may include another portfolio of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., owners of annuity contracts, or owners of life insurance contracts of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard contract owners voting instructions and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the Fund's election, to withdraw its separate account's investment in the Fund. The responsibility to take remedial action in the event of a determination by the Fund's Board of the existence of a material irreconcilable conflict, and to bear the cost of such remedial action, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund, and this responsibility will

be carried out with a view only to the interests of contract owners. A majority of the disinterested members of the Fund's Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by the vote of a majority of contract owners adversely affected by the irreconcilable material conflict. No penalty will be imposed by the Fund on any participating insurance company's separate account for withdrawing assets from the Fund (or any portfolio of the Fund) in the event of a material irreconcilable conflict.

5. The determination by the Fund's Board of Trustees of the existence of an irreconcilable material conflict and its implications shall be made known in writing promptly to all participating insurance companies.

6. The participating insurance companies or the Fund's investment advisor shall at least annually submit to the Fund's Board of Trustees such reports, materials and data as the Trustees may reasonably request so that the Trustees of the fund may fully carry out the obligations imposed upon them by the conditions contained in this application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board of Trustees. The obligations of the participating insurance companies to provide these reports, materials and data to the Fund's Board of Trustees when it so reasonably requests shall be a contractual obligation of all participating insurance companies under their agreement governing participation in the Fund.

7. All reports received by the Fund's Board of Trustees of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Fund's Board of Trustees or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. Participating insurance companies will provide pass-through voting privileges to all contract owners to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting. Each participating

insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received.

Participating insurance companies shall be responsible for assuring that each of their separate accounts investing in the Fund calculates voting privileges in a manner consistent with other variable annuity or variable life insurance separate accounts. The obligation to vote the Fund's shares and to calculate voting privileges as provided in the application shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

9. The Fund shall disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (b) material irreconcilable conflicts of interest may possibly arise, and (c) the Fund's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflicts. The Fund will notify all participating insurance companies that prospectus disclosure regarding the potential risks of mixed and shared funding may be appropriate.

10. If and to the extent Rule 6e-2 or 6e-3(T) is amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated under the 1940 Act with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested in this application, then the Applicants shall take such steps as may be necessary to comply with Rule 6e-2 or 6e-3(T), as amended, or Rule 6e-3, as adopted, to the extent such rules are applicable.

11. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and in particular the Fund will comply with section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in section 16(c) of the 1940 Act) as well as with sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-22505 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THRIFT SUPERVISION

[OTS No. 6657]

Home Federal Savings Bank of Alabama; Lafayette, AL; Final Action Approval of Conversion Application

September 15, 1989.

Notice is hereby given that on September 12, 1989, General Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings Bank of Alabama, LaFayette, Alabama for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and Supervisory Agent, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

M. Danny Wall,
Director.

[FR Doc. 89-22574 Filed 9-22-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

Environmental Impact Statement; Ka'u District, Hawaii

AGENCY: Office of Commercial Space Transportation (OCST), DOT.

ACTION: Notice of intent.

SUMMARY: OCST is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed commercial space launch complex in the Ka'u district on the Island of Hawaii, State of Hawaii.

FOR FURTHER INFORMATION CONTACT:

J. Randall Repcheck, Aerospace Engineer, Office of Commercial Space Transportation, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone: (202) 366-2258.

George Mead, Executive Director, Office of Space Industry, Department of

Business and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, Telephone: (808) 548-3451.

SUPPLEMENTARY INFORMATION: OCST, in cooperation with the State of Hawaii's Department of Business and Economic Development (DBED), will prepare an Environmental Impact Statement (EIS) for a proposed Hawaii commercial space launch complex. The EIS will comply with both the National Environmental Policy Act of 1969 (Pub. L. 91-190), and the Hawaii Revised Statutes chapter 343, as implemented by Administrative Rules title 11, chapter 200.

The State of Hawaii proposes the establishment of a commercial space launch complex at either Palima Point near the village of Pahala or Kahilipali Point near the village of Na'alehu in the Ka'u district on the Island of Hawaii. Launch operations are expected to begin in 1992. Operation of the facility will require issuance of a license by OCST in accordance with the Commercial Space Launch Act of 1984, as amended (Pub. L. 98-575, 100-657).

The proposed action includes the construction of launch and associated support facilities, and the extension of roads and utilities. The construction would take approximately 12 to 18 months. The purpose of the project is to provide space-related economic development opportunities on the Island of Hawaii and throughout the State. In addition, a site on Hawaii would offer the most southern launch location in the United States, which would improve launch vehicle capacity, and provide the capability to launch to either equatorial or polar orbits from the same site.

Alternatives to the proposed action include no action, either Palima Point or Kahilipali Point as an alternative site, and different facilities configurations.

Four public scoping meetings will be held in Hawaii to solicit comments on significant environmental issues associated with the proposed action. The specific dates and locations are:

- (1) October 26, 1989, 4:00 p.m., Community Clubhouse, Na'alehu, Hawaii.
- (2) October 26, 1989, 7:30 p.m., Pahala High School Auditorium, Pahala, Hawaii.
- (3) October 27, 1989, 9:00 a.m., State Office Building, Hilo, Hawaii.
- (4) October 27, 1989, 3:00 p.m., Hawaii State Capitol Auditorium, Honolulu, Hawaii.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments are invited from all interested parties. Questions concerning

this proposed action and the EIS should be directed to OCST or DBED at the addresses listed above.

Issued in Washington, DC on September 19, 1989.

Stephanie Lee-Miller,
Director, Office of Commercial Space
Transportation.

[FR Doc. 89-22508 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 183.22B; Designated Airworthiness Representatives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 183.33B, Designated Airworthiness Representatives for review and comment. The proposed AC 183.33B provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) part 183, Representatives of the Administrator.

DATE: Comments submitted must identify the proposed AC 183.33B File Number P8-230-0046, and be received by December 26, 1989.

ADDRESS: Copies of the proposed AC 183.33B can be obtained from, and comments may be returned to the following: Federal Aviation Administration, Airworthiness Certification Branch, AIR-230, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John M. Rice, Federal Aviation Administration, 800 Independence Avenue, SW., Aircraft Manufacturing Division, Airworthiness Certification Branch, AIR-230, Room 333, Washington, DC 20591 (201) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 183.33B contains information and guidance concerning the selection and appointment of Designated Airworthiness Representatives (DAR) and identifies the specific functions which may be delegated to DAR's as authorized by the Federal Aviation Administration (FAA), Director, Aircraft Certification Service by FAR part 183 subpart C. Comments Invited.

Interested persons are invited to comment on the proposed AC 183.33B listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 183.33 may be examined, before and after the comment closing date in Room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on June 26, 1989.

William J. Sullivan,
Assistant Director, Aircraft Certification
Service.

[FR Doc. 89-27558 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Sarasota-Bradenton Airport, Sarasota, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Sarasota-Manatee Airport Authority for the Sarasota-Bradenton Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150, are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Sarasota-Bradenton Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 10, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 11, 1989. The public comment period ends November 10, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583. Comments on the proposed noise

compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Sarasota-Bradenton Airport are in compliance with applicable requirements of part 150, effective September 11, 1989. These maps supersede those maps previously approved on November 14, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 10, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Sarasota-Manatee Airport Authority submitted to the FAA on September 7, 1989, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from June 18, 1983 to September 6, 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Sarasota-Manatee Airport Authority. The specific maps under consideration are Exhibit 5A, 1988 Existing Conditions Noise

Exposure Map (page 73) and Exhibit 5B, 1993 Future Conditions Noise Exposure Map (page 74) in the submission. The FAA has determined that these maps for the Sarasota-Bradenton Airport are in compliance with applicable requirements. This determination is effective on September 11, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Sarasota-Bradenton Airport, also effective on September 11, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 10, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary

considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096

Mr. Richard Vicar, Executive Director, Sarasota-Manatee Airport Authority, 6121 General Twining, Sarasota, FL 34243

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida, September 11, 1989.

James E. Sheppard,
Manager, Orlando Airports District Office.
[FR Doc. 89-22559 Filed 9-22-89; 8:45 am]
BILLING CODE 4910-13-M

Noise Exposure Map Notice, University of Illinois-Willard Airport, Champaign-Urbana, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the University of Illinois for Willard Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region,

Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for University of Illinois-Willard Airport are in compliance with applicable requirements of part 150, effective September 5, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act") an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non compatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the University of Illinois. The specific maps under consideration are the noise exposure maps: Noise Exposure Map-1988 Unabated Conditions and Noise Exposure Map-1993 Unabated Conditions, located on the page following page I-4 of the submission. The FAA has determined that these maps for University of Illinois-Willard Airport are in compliance with applicable requirements. This determination is effective on September 5, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours

depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018.
Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 268, Des Plaines Illinois 60018.

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706.
Office of Airport Manager, University of Illinois-Willard Airport, Savoy, Illinois 61874.

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Des Plaines, Illinois on September 5, 1989.

W. Robert Billingsley,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-22500 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

Intent To Prepare Environmental Impact Statement; Colorado Springs, CO Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration, acting as lead agency, is issuing this public notice that Draft and Final Environmental Impact Statements (EIS) will be prepared for the development of a new runway at Colorado Springs Municipal Airport.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Johnson, Federal Aviation Administration, Airports District Office, 5440 Roslyn Street, Suite 300, Denver, Colorado 80216-6026. Telephone: (303) 286-5527.

SUPPLEMENTARY INFORMATION: The proposed action is the development of a new runway at Colorado Springs Municipal Airport, Colorado Springs, Colorado.

A reevaluation of previous environmental work related to the project has been produced by the City of Colorado Springs and will be made available for review at the following locations:

Penrose Memorial Library, 30 N. Cascade, Colorado Springs, Colorado 80903.

FAA, Denver Airports District Office, 5440 Roslyn Street, Suite 300, Denver, Colorado 80216-6026.

Colorado Springs Municipal Airport, 5750 Fountain Blvd., Colorado Springs, Colorado 80916.

Scoping Process

In order to ensure that all significant issues related to the proposed action are identified, the public participation process (scoping process) will consist of written public input regarding the issues which the public feels should be addressed in the EIS. The written input should be addressed to: Federal Aviation Administration, Airports District Office, REF: COS EIS, 5440 Roslyn Street, Suite 300, Denver, Colorado 80216-6026.

Letters containing environmental concerns must be received by October 25, 1989, at the Federal Aviation Administration, Airports District Office, 5440 Roslyn Street, Suite 300, Denver, Colorado 80216-6026, in order to be given consideration. Letters should be to the attention of Mrs. Barbara Johnson.

Approximate Release of Draft EIS: December, 1989.

Approximate Release of Final EIS: February, 1990.

Issued in Seattle, Washington on September 8, 1989.

Dated: September 18, 1989.

Cecil C. Wagner,

Acting Manager, Airports Division.

[FR Doc. 89-22561 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-36]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 9, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 19651.

Petitioner: Learjet Corporation.

Regulations Affected: 14 CFR 21.197.

Description of Relief Sought: To extend Exemption No. 4593A that allows petitioner to ferry aircraft between its facilities at Wichita, Kansas and Tucson, Arizona before completion of flight test, certification, and customer delivery. Exemption No. 4593A will expire on January 31, 1990.

Docket No.: 25973.

Petitioner: Simulator Training, Inc.

Sections of the FAR Affected: 14 CFR 63.37(b) (1), (2), (3), and (4).

Description of Relief Sought: To allow petitioner's FAA-approved training program applicants to satisfy the current requirement for 5 hours of aircraft training in the duties of a flight engineer in flight at the flight engineer's station by substituting a combination of in-flight observation under the supervision of a qualified flight engineer instructor and two flight engineer line-oriented flight training sessions in an FAA-approved visual flight simulator.

Docket No.: 25981.

Petitioner: Priester Aviation.

Sections of the FAR Affected: 49 CFR 40.33.

Description of Relief Sought: To allow the medical review officer (MRO) to transmit the results of drug testing to the petitioner before the MRO completes a final review of results.

Docket No.: 25990.

Petitioner: Wrangler Aviation, Inc.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought: To allow petitioner to contract with certain foreign companies for the maintenance, repair, overhaul, and modification of engines, propellers, and other systems and components of the Canadair CL-44 aircraft operated by the petitioner and to purchase certain parts from certain foreign suppliers.

Docket No.: 25995.

Petitioner: Whiteco Industries dba Signco Transportation.

Sections of the FAR Affected: 14 CFR 135.251 and part 121, Appendix I.

Description of Relief Sought: To allow petitioner to continue operations without testing of each of its employees in accordance with the

drug testing procedures of part 121, Appendix I.

Docket No.: 22192.

Petitioner: Richmor Aviation, Inc.

Sections of the FAR Affected: 14 CFR 141.91(a).

Description of Relief Sought/

Disposition: To extend Exemption No. 3398, as amended, that allows petitioner to conduct flight training at four satellite base schools that are more than 25 nautical miles from its main operations base at Ballston Spa, New York. Grant, September 15, 1989, Exemption No. 3398D

Docket No.: 25446.

Petitioner: Columbia Helicopters, Inc.

Regulations Affected: 14 CFR 91.169(e), (f), (g), and (h).

Description of Relief Sought/

Disposition: To amend Exemption No. 4942 that allows petitioner to utilize an inspection program selected under § 91.169(e) for its Boeing Vertol Model 234LR helicopter. The amendment would add four Model 234LR helicopters to the exemption. Grant, September 11, 1989, Exemption No. 4942A.

Docket No.: 25836.

Petitioner: Braniff Incorporated.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought/

Disposition: To allow petitioner to contract with foreign original equipment manufacturers and their designated repair agencies for the inspection, repair overhaul, and modification of parts to support petitioner's Airbus A320 aircraft. Grant, September 1, 1989, Exemption No. 5096

Docket No.: 26004.

Petitioner: Discovery Airways Inc.

Sections of the FAR Affected: 14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6); 121.411(b); and 121.413 (b) and (c).

Description of Relief Sought/

Disposition: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from British Aerospace for the purpose of training petitioner's initial cadre of pilots in the British Aerospace 146 (BAe 146) type airplane in Great Britain without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. Grant, September 13, 1989, Exemption No. 5099

[FR Doc. 89-22562 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

General Aviation Compliance and Enforcement; Forums

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of open forums and request for comments.

SUMMARY: This notice supplements the Federal Register notice of August 29, 1989, which announced FAA's intent to evaluate its General Aviation Compliance and Enforcement Program. That notice stated that the public can participate in the evaluation: (1) By attending and/or speaking at an open forum or (2) by written comments. This supplement announces that a listening session will be held in Washington, DC, on October 17, 1989.

The vehicle for this evaluation is a System Safety and Efficiency Review (SSER) conducted by the Office of the Associate Administrator for Aviation Safety. Areas of review include, but will not be limited to, sanction guidelines, FAA and industry/public attitudes, enforcement effectiveness, the Surveillance Program, and the Accident Prevention Program.

DATE: Written comments should be received on or before November 15, 1989.

ADDRESS: Send all written comments to: Federal Aviation Administration, Associate Administrator for Aviation Safety, Washington, DC 20591, Attention: ASQ-1.

Background

SSER's are comprehensive, interdisciplinary evaluations conducted under the leadership of the FAA's Associate Administrator for Aviation Safety. Teams consist of highly qualified technical representatives from FAA, other units of Government, and the aviation community. SSER's review specific issues in order to improve aviation safety and efficiency and address air traffic control, Flight Standards, Aircraft Certification, Airway Facilities, Civil Aviation Security, and Airport Safety, plus the activities of airport operators, air carriers, and others. The SSER of FAA's General Aviation Compliance and Enforcement Program is being conducted to determine its effectiveness in promoting safety in general aviation. This review does not involve an evaluation of the agency's enforcement policies for air carriers. All SSER's are preceded by listening sessions at which the aviation community and other interested persons and organizations are encouraged to present their views.

The review is being conducted in three phases: (1) Data gathering and

analysis; (2) listening sessions at various locations around the country; and (3) technical evaluation of specific compliance and enforcement issues, including those identified in listening sessions or in written comments.

Invitation to Participate

Interested parties and individuals are invited to participate in this SSER by submitting written comments to the address shown above or by attending the listening sessions shown below. Participants are asked to identify issues which they believe should be examined in the SSER. Reservations or formal presentations are not necessary. Comments will be recorded, but no transcript will be produced. Dates, times, and locations for the listening sessions are shown below:

Tuesday, September 26, 1989 (7:30 p.m.), Ramada Inn—Southeast, 601 East 87th Street, Kansas City, Missouri.

Wednesday, September 27, 1989 (7:30 p.m.), Sheraton North Shore Inn, 933 Skokie Blvd., Northbrook, Illinois.

Thursday, September 28, 1989 (7:30 p.m.), Holiday Inn, 17040 South Halsted, Harvey, Illinois.

Thursday, October 5, 1989 (10 a.m. to 12 noon), Georgia World Congress Center, Atlanta, Georgia.

Friday, October 20, 1989 (11 a.m. to 12:30 p.m.), Buena Vista Palace Hotel, Lake Buena Vista, Florida.

Tuesday, October 17, 1989 (7:30 p.m.), Federal Aviation Administration, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC.

Charles H. Huettnier,

Deputy Associate Administrator for Aviation Safety.

[FR Doc. 89-22557 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 167—Digital Avionics Software; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the first meeting of RTCA Special Committee 167 on Digital Avionics Software to be held October 19-20, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) briefing on the report of the *Ad Hoc* Committee; (3) report on related EUROCAE activity (WG-12); (4) review and approve Terms of Reference, RTCA

Paper No. 262-89/SC167-1; (5) briefings on status of today's avionics software standards and methods; (6) committee discussion on extent of the problem; (7) develop initial work program and schedule of accomplishment; (8) assignment of tasks; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 15, 1989.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 89-22564 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 164—Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the fourth meeting of RTCA Special Committee 164 on Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment to be held October 25-27, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the third meeting's minutes; (3) technical presentations; (4) review of task assignments from last meeting; (5) review the first draft of the MOPS; (6) working group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a

written statement to the committee at any time.

Issued in Washington, DC, on September 15, 1989.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 89-22563 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Docket No. IRA-47]

Department of the Navy, Application for Inconsistency Ruling Concerning City of Oakland, CA; Nuclear Free Zone Act

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of extension of rebuttal comment period.

SUMMARY: The United States Department of the Navy (DON) has applied for an administrative ruling determining whether the Nuclear Free Zone Act of the City of Oakland, California Code is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA. This Notice extends the rebuttal comment period on that application.

DATES: A public notice and invitation to comment on that application was published at 54 FR 27104, June 27, 1989. It provided for a comment period ending August 14, 1989, and a rebuttal comment period ending September 29, 1989. The rebuttal comment period is hereby extended to October 13, 1989. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8419, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-47. Three copies and requested. A copy of each comment and rebuttal comment must also be sent to Lawrence L. Lamade, Esq., General Counsel of the Navy, Washington, DC 20350-1000 and to Mr. Henry Gardner, City Manager, City of Oakland, One City Hall Plaza, Oakland, CA 94612, and that fact certified to at the time each comment is submitted to

the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Lamade and Mr. Gardner at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT:

Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-4362.

Public Comment: Comments should be limited to the issue of whether the requirements of the Nuclear Free Zone Act of the City of Oakland, California, and inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, Appendix A to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Issued in Washington, DC on September 19, 1989.

Joseph T. Horning,

Acting Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-22497 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 19, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0155.

Form Number: None.

Type of Review: Extension.

Title: Approval of Commercial Gaugers and Accreditation of Commercial Laboratories.

Description: Individuals of companies desiring Customs recognition as approved commercial gaugers or accredited commercial testing laboratories may apply to Customs by letter. This recognition is required for acceptance of certain gauge or test results by Customs.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Response/Recordkeeping: 5 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 119 hours.

Clearance Officer: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-22500 Filed 9-22-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

September 19, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1014.

Form Number: 1066 and Schedule Q (Form 1066).

Type of Review: Revision.

Title: U.S. Real Estate Mortgage

Investment Conduit Income Tax Return; Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income.

and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 1,000

Estimated Burden Hours Per Response/Recordkeeping:

	Form 1066	Schedule Q
Recordkeeping	28 hrs., 42 mins.	6 hrs., 13 mins.
Learning about the law or the form.	6 hrs., 29 mins.	1 hr., 16 mins.
Preparing the form.	9 hrs., 7 mins.	2 hrs., 21 mins.
Copying, assembling, and sending the form to IRS.	32 mins.	16 mins.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 145,840 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhaur (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89-22501 Filed 9-22-89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

September 19, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 8818.

Type of Review: Resubmission.

Title: Record of Redemption of College Savings Bonds Issued After 1989.

Description: If an individual redeems U.S. Savings bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. The form can be used by the individual to keep a record of the bonds cashed so that he or she can claim the proper interest exclusion.
Respondents: Individuals or households.
Estimated Number of Respondents: 25,000.

Estimated Burden Hours Per Response/Recordkeeping:

	Minutes
Recordkeeping	7
Learning about the law or the form...	3
Preparing the form	15

Frequency of Responses: Other.

Estimated Total Recordkeeping/Reporting Burden: 21,500 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhaur (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89-22502 Filed 9-22-89; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 184

Monday, September 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 29, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-22673 Filed 9-21-89; 12:08 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 8, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-22674 Filed 9-21-89; 12:08 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, October 13, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-22675 Filed 9-21-89; 12:08 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 20, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-22676 Filed 9-21-89; 12:08 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 27, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-22677 Filed 9-21-89; 12:08 pm]

BILLING CODE 6351-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Meeting

(September 20, 1989.)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: September 27, 1989 8:30 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTER TO BE CONSIDERED: *Mobile Oil Exploration and Producing Southeast, Inc. et al. v. FERC*, No. 86-4940 (5th Cir. September 15, 1989.)

CONTACT PERSON FOR MORE

INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22745 Filed 9-21-89; 4:01 pm]

BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

NOTICE

(September 20, 1989.)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552b:

DATE AND TIME: September 27, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 903rd Meeting—September 27, 1989, Regular Meeting (10:00 a.m.)

CAP-1.

Project No. 1962-010 and 1988-013, Pacific Gas & Electric Company
Project Nos. 3223-004 and 6729-002, Sacramento Municipal Utility District, the Northern California Power Agency, and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California

CAP-2.

Project No. 1417-010, The Central Nebraska Public Power and Irrigation District
Project No. 1835-023, The Nebraska Public Power District

CAP-3.

Project No. 2833-019, Public Utility District No. 1 of Lewis County Washington

CAP-4.

Project No. 6727-011, Northwest Power Company, Inc.

CAP-5.

Project No. 2959-021, The City of Seattle, Washington

CAP-6.

Project No. 9673-004, WV Hydro, Inc.

CAP-7.

Project No. 7395-004, W.M. Lewis & Associates

CAP-8.

Docket No. 8863-003, Northeast Hydrodevelopment Corporation

CAP-9.

Docket No. EL86-24-001, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York

Docket No. EL86-29-001, Connecticut Municipal Wholesale Electric Cooperative and Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York

CAP-10.
Omitted

CAP-11.
Docket Nos. ER89-582-000 and ER89-596-009, New England Power Company

CAP-12.
Docket No. ER85-720-013, The Connecticut Light and Power Company
Docket No. ER85-707-009, Western Massachusetts Electric Company
Docket No. ER85-689-009, Holyoke Water Power Company and Holyoke Power and Electric Company

CAP-13.
Docket No. ER81-187-010, Public Service Company of New Mexico

CAP-14.
Docket No. ER89-491-002, Canal Electric Company

CAP-15.
Docket No. ER84-31-001, Central and South West Services, Inc.

CAP-16.
Docket Nos. ER80-573-005, ER84-604-011 and ER85-477-004, Southwestern Public Service Company

CAP-17.
Docket No. QF87-274-004, Union Carbide Corporation

CAP-18.
Docket No. ER86-721-006, Central Power and Light Company

CAP-19.
Docket No. ER89-207-001, Public Service Company of New Hampshire

CAP-20.
Docket No. EL86-26-005, San Diego Gas and Electric Company v. Alamito Company

Docket No. ER87-47-003, Alamito Company

CAP-21.
Docket No. EL89-25-000, Kentucky Utilities Company

CAP-22.
Docket No. EL89-16-000, Delmarva Power & Light Company

CAP-23.
Docket No. QF86-734-002, Luz Solar Partners III, Ltd.

Docket No. QF86-736-002, Luz Solar Partners IV, Ltd.

Docket No. QF87-403-002, Luz Solar Partners V, Ltd.

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM89-8-001, Establishment of Deadlines for First Sellers to Make and Report Refunds

CAM-2.
Docket No. GP89-43-019, Northern Natural Gas Company

CAM-3.
Docket No. GP88-17-001, El Paso Natural Gas Company

CAM-4.

Docket No. GP88-26-001, Northern Pump Company, Danner No. A-1 Well

CAM-5.
Omitted

CAM-6.
Docket No. GP89-35-001, Jennings Exploration Company

CAM-7.
Docket No. GP89-36-000, Utah Department of Natural Resources

CAM-8.
Docket No. GP89-30-000, Realitos Energy Corporation

CAM-9.
Docket No. GP87-37-001, Phillips Petroleum Company v. Natural Gas Pipeline Company of America.

Consent Gas Agenda

CAG-1.
Docket No. RP89-35-005, Midwestern Gas Transmission Company

CAG-2.
Docket No. RP89-220-000, CNG Transmission Corporation

CAG-3.
Docket No. RP89-222-000 and RP89-48-000, Transwestern Pipeline Company

CAG-4.
Docket No. RP89-223-000, Black Marlin Pipeline Company

CAG-5.
Docket No. RP89-224-000, Southern Natural Gas Company

CAG-6.
Docket No. RP89-225-000, South Georgia Natural Gas Company

CAG-7.
Docket No. RP89-226-000, Valero Interstate Transmission Company

CAG-8.
Docket No. RP89-228-000, Texas Gas Transmission Corporation

CAG-9.
Docket Nos. RP89-230-000, 001, TM90-1-33-000 and 001, El Paso Natural Gas Company

CAG-10.
Docket Nos. TQ90-1-000 and TM90-1-16-000, National Fuel Gas Supply Corporation

CAG-11.
Docket Nos. TQ90-1-33-000, 001 and 002, El Paso Natural Gas Company

CAG-12.
Docket No. TA90-1-11-000, United Gas Pipe Line Company

CAG-13.
Docket Nos. RP89-227-000 and TM90-2-28-000, Panhandle Eastern Pipe Line Company

CAG-14.
Docket Nos. RP89-232-000 and TM90-4-28-000, Panhandle Eastern Pipe Line Company

CAG-15.
Docket No. RP89-233-000, Williams Natural Gas Company

CAG-16.
Docket No. RP89-234-000, Moraine Pipeline Company

CAG-17.
Docket No. TA90-1-32-000, Colorado Interstate Gas Company

CAG-18.

Docket No. TA90-1-40-000, Raton Gas Transmission Company

CAG-19.
Docket Nos. RP89-229-000 and TM89-7-21-000, Columbia Gas Transmission Corporation

CAG-20.
Docket No. TM89-10-17-000, Texas Eastern Transmission Corporation

CAG-21.
Docket No. TM89-11-17-000, Texas Eastern Transmission Corporation

CAG-22.
Docket Nos. RP89-231-000 and TM90-1-30-000, Trunkline Gas Company

CAG-23.
Docket Nos. TQ90-1-9-000 and TM90-9-000, Tennessee Gas Pipeline Company

CAG-24.
Docket Nos. RP89-147-003, 004 and 005, United Gas Pipe Line Company

CAG-25.
Docket No. RP89-210-000, Florida Gas Transmission Company

CAG-26.
Docket No. TA89-1-42-000, Transwestern Pipeline Company

CAG-27.
Omitted

CAG-28.
Docket No. CP89-1227-000, Northern Natural Gas Company

CAG-29.
Docket No. CP89-1582-000, National Fuel Gas Supply Corporation

CAG-30.
Docket No. RP89-200-002, Pacific Gas Transmission Company

CAG-31.
Docket No. RP89-73-005, Pelican Interstate Gas System

CAG-32.
Docket Nos. RP88-190-003, TM89-2-27-004, TA88-1-27-005, RP88-57-006 and RP89-110-003, North Penn Gas Company

Docket Nos. RP85-178-065 and RP88-191-013, Tennessee Natural Gas Pipeline Company

Docket Nos. RP88-68-018 and RP87-7-058, Transcontinental Gas Pipe Line Corporation

Docket No. RP88-217-012, CNG Transmission Corporation

CAG-33.
Docket Nos. RP88-198-011, RP89-59-004 and RP89-130-007, Transwestern Pipeline Company

CAG-34.
Docket No. RP89-45-006, ANR Pipeline Company

CAG-35.
Docket No. RP89-132-009, El Paso Natural Gas Company

CAG-36.
Docket No. RP89-196-002, Northwest Pipeline Corporation

CAG-37.
Docket Nos. RP89-134-003, RP89-9-006 and RP88-241-007, Panhandle Eastern Pipe Line Company

CAG-38.
Docket No. TM89-3-18-001, Texas Gas Transmission Corporation

CAG-39.

- Docket No. CP88-99-006, Transwestern Pipeline Company
- CAG-40.
Docket Nos. CP82-487-019, RP84-62-002, RP84-93-009, TA84-2-49-002, and TA85-1-49-004, (Phases II and III), Williston Basin Interstate Pipeline Company
- CAG-41.
Docket Nos. CP89-470-002 and CP88-522-007, Tennessee Gas Pipeline Company
- CAG-42.
Docket Nos. RP87-71-004 and RP88-182-004, Gas Research Institute
- CAG-43.
Docket No. RP88-191-012, Tennessee Gas Pipeline Company
- CAG-44.
Docket Nos. RP89-179-001, CP89-1488-000 and CP89-1489-000, Western Gas Interstate Company
- CAG-45.
Docket Nos. RP88-45-013 and RP88-46-003, Arkla Energy Resources
- CAG-46.
Docket Nos. RP89-141-001 and 000, Sea Robin Pipeline Company
- CAG-47.
Docket No. RP89-186-003, Great Lakes Gas Transmission Company
- CAG-48.
Docket No. RP89-124-003, CNG Transmission Corporation
- CAG-49.
Docket Nos. RP89-138-002, 000, RP88-264-011, 005, RP88-27-014, 013 and CP87-524-005, United Gas Pipe Line Company
- CAG-50.
Docket Nos. RP89-125-001, RP89-10-003 and RP88-240-005, Panhandle Eastern Pipe Line Company
- CAG-51.
Docket No. RP88-35-013, Great Lakes Gas Transmission Company
- CAG-52.
Docket No. RP89-161-001, ANR Pipeline Company
- CAG-53.
Docket No. RP89-160-001, Trunkline Gas Company
- CAG-54.
Docket Nos. RP89-98-001, 004 and RP89-133-002, Colorado Interstate Gas Company
- CAG-55.
Docket No. RP85-165-042, Consolidated Gas Transmission Corporation
- CAG-56.
Docket Nos. RP86-41-000, 002 and 004, Algonquin Gas Transmission Company
- CAG-57.
Docket Nos. RP89-82-002, 003, RP89-37-002, 003, RP89-99-001, 003, RP89-38-001 and 003, High Island Offshore System and U-T Offshore System
- CAG-58.
Docket Nos. RP87-13-000 and RP87-69-000, South Georgia Natural Gas Company
- CAG-59.
Docket Nos. RP88-217-000, 001, RP88-124-000 and RP89-165-000, CNG Transmission Corporation
- CAG-60.
Docket Nos. RP86-169-000, RP86-105-000 and RP87-25-000, ANR Pipeline Company
- CAG-61.
Docket No. RP88-174-002, Dynasty Gas Marketing, Inc.
- Docket No. RP88-195-002, Northern Border Pipeline Company
- CAG-62.
Docket No. IS85-15-000, Southern Pacific Pipe Lines, Inc.
- CAG-63.
Docket No. ST88-5804-001, Acacia Natural Gas Corporation
- CAG-64.
Docket No. ST89-3406-000, K-M Mississippi, Inc.
- CAG-65.
Docket Nos. ST89-3298-000 and ST89-3375-000, Enogex, Inc.
- CAG-66.
Docket No. ST89-3601-000, SNG Intrastate Pipeline Inc.
- CAG-67.
Docket Nos. ST89-3604-000, ST89-3605-000 and ST89-3606-000, Crosstex Pipeline Company
- CAG-68.
Docket No. ST89-2595-000, Southern Gas Pipeline Company
- CAG-69.
Docket No. ST89-2352-000, Cranberry Pipeline Corporation
- CAG-70.
Docket No. CP73-184-006, Colorado Interstate Gas Company, A Division of Colorado Interstate Gas Company
- Docket No. CI73-485-005, CIG Exploration, Inc.
- CAG-71.
Omitted
- CAG-72.
Docket Nos. RI74-188-114 and RI75-21-109, Independent Oil & Gas Association of West Virginia
- CAG-73.
Docket Nos. CP88-574-001 and CP88-779-001, CNG Transmission Corporation
- CAG-74.
Docket No. CP88-194-003, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
- Docket No. CP89-7-003, Transcontinental Gas Pipe Line Corporation
- Docket No. CP88-195-001, PennEast Gas Service
- CAG-75.
Docket No. CP88-542-001, Great Lakes Gas Transmission Company
- CAG-76.
Docket No. CP89-252-001, Mississippi Valley Gas Company v. Gulf Fuels Inc. and ANR Pipeline Company
- CAG-77.
Docket No. CP89-1006-001, Texas Gas Transmission Corporation
- CAG-78.
Docket No. CP88-587-004, Distrigas Corporation and Distrigas of Massachusetts Corporation
- CAG-79.
Docket Nos. CP81-107-031, CP83-403-014, RP85-169-044, CP87-285-004, CP88-422-002 and CP87-389-006, CNG Transmission Corporation
- CAG-80.
Docket No. CP87-107-001, Midwestern Gas Transmission Company
- CAG-81.
Docket No. CP88-137-001, ANR Pipeline Company
- CAG-82.
Docket No. CP89-657-001, Commonwealth Gas Pipeline Corporation
- CAG-83.
Omitted
- CAG-84.
Docket No. CP81-296-017, Tennessee Gas Pipeline Company
- CAG-85.
Docket No. CP89-1966-000, Natural Gas Pipeline Company of America
- CAG-86.
Docket No. CP89-1971-000, Trunkline Gas Company
- CAG-87.
Docket No. CP89-524-000, City of Gallaway, Tennessee, Applicant and Texas Gas Transmission Corporation, Respondent
- CAG-88.
Omitted
- CAG-89.
Docket No. CP89-1474-000, KN Energy, Inc.
- Docket Nos. CP89-1553-000 and CP89-1567-000, Colorado Interstate Gas Company
- CAG-90.
Docket No. CP89-311-000, Williston Basin Interstate Pipeline Company
- CAG-91.
Docket No. CP89-539-000, Transwestern Pipeline Company
- CAG-92.
Docket Nos. RP89-212-000, 001, CP89-759-001, 002 and RP88-68-000, Transcontinental Gas Pipe Line Corporation
- CAG-93.
Docket No. CP88-136-010, Texas Eastern Transmission Corporation
- I. Licensed Project Matters*
- P-1.
Omitted
- II. Electric Rate Matters*
- ER1.
Reserved
- Miscellaneous Agenda*
- M-1.
Reserved
- M-2.
Reserved
- M-3.
Docket No. RP89-187-000, Gas Research Institute concerning GRI's application for its 1990 R&D Program and its related five-year plan for 1990-1994.
- I. Pipeline Rate Matters*
- RP-1.
Docket Nos. RP86-168-000, *et al.*, RP86-15-000, *et al.*, RP87-55-000, *et al.*, RP88-43-000, *et al.*, RP88-56-000, *et al.*, RP88-119-000, RP88-187-000, *et al.*, RP88-207-000, *et al.*, RP89-116-000, CP83-452-034, RP89-181-000, TA81-1-21-000, *et al.*, TA81-1-21-022, TA82-1-21-001, TA82-1-21-024, TA82-1-21-027, TA87-4-21-000, TA87-4-21-002, TA87-5-21-000, *et al.*, TA88-2-21-000, TA89-1-21-000, TC79-127, TC86-21-000, TQ88-1-21-000, TQ88-2-21-000, TQ89-1-21-000, TQ89-2-21-000, TQ89-3-21-000, TQ89-4-21-000, TM89-2-21-000, TQ89-2-21-000, TQ89-

3-21-000, TQ89-4-21-000, TM89-2-21-000, TM89-3-21-000 and TM89-4-21-000, Columbia Gas Transmission Corporation Docket Nos. RP86-167-000, *et al.*, RP86-14-000, *et al.*, and RP89-94-000, *et al.*, Columbia Gulf Transmission Company concerning settlement involving restructuring of services and service levels.

RP-2.

Docket No. RP89-94-000, RP65-66-000 and CP86-720-000, Trailblazer Pipeline Company concerning rate settlement involving depreciation, refunds, and rate design.

RP-3.

Docket Nos. RP88-47-000 and 002, (Phase I), Northwest Pipeline Corporation concerning partial rate settlement.

RP-4.

Docket Nos. RP88-68-000, RP87-7-012, 000, RP89-122-000, RP89-123-000, RP89-163-000, TA88-1-29-000, TA88-4-29-000, TQ88-1-29-000, TA88-5-29-000, TQ89-1-29-000, TQ89-2-29-000, TQ89-4-29-000, TA89-1-29-000, CP89-1915-000, CP89-1916-000, CP74-33-013, CP84-335-022, CP61-194-000, CP63-228-000 and G-2432-000, Transcontinental Gas Pipe Line Corporation concerning settlement involving take-or-pay liability, restructuring of merchant function, throughput volume projections for transportation and sales, and fuel retention percentages.

RP-5.

Docket Nos. RP88-93-000, 001, RP88-40-000 and 001, Questar Pipeline Company (formerly Mountain Fuel Resources, Inc.) concerning settlement involving application of the rate design policy statement.

II. Producer Matters

CI-1.

Reserved

III. Pipeline Certificate Matters

CP-1.

Docket No. CP88-570-002, Mobile Bay Pipeline Projects. Order on multiple filings for certificate authorizations to construct and operate pipeline projects in the Mobile Bay Area.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22746 Filed 9-21-89; 4:01 pm]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:08 p.m. on Tuesday, September 19, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

An administrative enforcement proceeding. Application of The Farmers State Bank of Blue Mound, Blue Mound, Kansas, for

consent to merge, under its charter and title, with Bank of Pleasanton, Pleasanton, Kansas, and for consent to establish the sole office of Bank of Pleasanton as a branch of the resultant bank.

Matters relating to the possible failure of an insured bank.

Matters relating to transactions involving failing thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr., (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 20, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-22622 Filed 9-21-89; 9:10 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, September 27, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Rochester & Pittsburgh Coal Company*, Docket No. PENN 88-152-R. (Issues include whether the judge erred in affirming an imminent danger withdrawal order.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-22695 Filed 9-22-89; 1:52 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 38536, September 19, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, September 25, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Discussion of Voluntary Guide to Conduct for Senior Officials of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-22691 Filed 9-21-89; 12:38 pm]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:23 p.m. on Tuesday, September 19, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) Matters regarding the Corporation's corporate activities; (2) delegation of authority with respect to leases; and (3) matters regarding the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4) and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: September 20, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-22623 Filed 9-21-89; 9:10 am]

BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

Meeting No. 1420

TIME AND DATE: 9 a.m. (C.D.T.),

Wednesday, September 27, 1989.

PLACE: National Fertilizer Development Center Auditorium, Muscle Shoals, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 16, 1989.

Action Items

New Business

A—Budget and Financing

A1. Consideration of Possible Arrangements Whereby TVA Would Sell Bonds in the Public Market for Refinancing High-Interest Debt Held by the Federal Financing Bank.

A2. Payments to the U.S. Treasury from Net Power Proceeds.

A3. Short-Term Borrowing from the Treasury.

A4. Modification to the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1990 for the Installation of One 161-kV, 84-MVAR Capacitor Bank for Charleston, Tennessee, 161-kV Substation.

A5. Fiscal Year 1990 Budget Financed from Nonpower Proceeds.

B—Purchase Awards

B1. Requisition 71 Reissue—Short-Term Coal for Widows Creek Fossil Plant.

B2. Requisition 20—Term Coal for Bull Run Fossil Plant.

C—Power Items

* C1. Wheeling Agreement with Big Rivers Electric Corporation.

* Item approved by individual Board members. This would give formal ratification to the Board's action.

C2. Proposed Growth Credit for New and Expanding General Power Customers.

C3. Proposed Increases in Prices Under Dispersed Power Price Schedule—CSPP.

E—Real Property Transactions

* E1. Grant of Permanent Easement to Tennessee Department of Transportation for Highway 41A Bridge Project in Bedford County, Tennessee, Affecting 1.2 Acres.

E2. Sale of Four Noncommercial, Nonexclusive Permanent Recreation Easements Affecting 0.56 Acre of Tellico Reservoir Shoreline in Loudon and Monroe Counties, Tennessee.

E3. Grant of Permanent Easement Affecting 239 Acres of Guntersville Reservoir Land in DeKalb, Jackson, and Marshall Counties, Alabama.

E4. Conveyance of Permanent Easement Affecting Approximately 5.7 Acres of Hales Bar-Carter Street Transmission Line Right-of-Way.

E5. Sale of Permanent Easement Affecting 1.5-Acre Portion of TVA's Johnsonville Fossil Plant in Humphreys County, Tennessee.

E6. Resale of White Oak Lease on Red Bird Coal Property in Leslie County, Kentucky.

F—Unclassified

* F1. Supplement No. 6 to Personal Services Contract No. TV-72101A with Ebasco Services Incorporated.

* F2. Interagency Agreement with U.S. Department of Energy for the Southeastern Regional Biomass Energy Program.

F3. Revisions to TVA Code II Transportation.

F4. Supplement No. 6 to Contract No. TV-67320A with Bicentennial Volunteers, Inc., for the TVA Retirees Volunteer Assistance Program.

F5. Supplement No. 2 to Contract No. TV-77825A with Technology Exchange Center.

F6. Changes to Rules and Regulations of the Retirement System, Terms and Conditions of the Voluntary Retirement Savings and Investment Plan, and the Provisions of the TVA Savings and Deferral Retirement Plan to Maintain These Plans' Compliance with IRS Requirements.

F7. TVA Contribution to Retirement System for Fiscal Year 1990.

F8. Supplement No. 3 to Contract No. TV-69657A with U.S. Department of the Army, Corps of Engineers, Missouri River Division

Laboratory, to Continue Analysis of Environmental Soil and Water Samples.

F9. Filing of a Condemnation Case.

F10. Supplement No. 4 to Consulting Services Contract No. TV-69636A with Thomas M. Leps, Incorporated.

F11. Supplement No. 9 to Consulting Services Contract No. TV-55304A with Robert B. Jansen.

F12. Payments to States and Counties in Lieu of Taxes for Fiscal Year Ending September 30, 1989, as Provided Under Section 13 of the TVA Act.

F13. Supplement No. 10 to Contract No. TV-62313A with the State of Alabama.

F14. Supplement No. 8 to Contract No. TV-62311A with the Tennessee Emergency Management Agency.

F15. Settlement Agreement between TVA and General Electric Company under Contract No. TV-66821A and Supplement No. 9 to Personal Services Contract No. TV-73040A with General Electric Company.

F16. Supplement No. 3 to Interagency Agreement No. TV-65528A between TVA and the United States Department of the Interior, Bureau of Reclamation, for Inspection Services.

F17. Contract No. TV-79419T with U.S. Department of the Army, Lexington Blue Grass Army Depot—Topographic Mapping for Army Blue Grass Facility.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael, Coordinator, Governmental and Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000 or 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

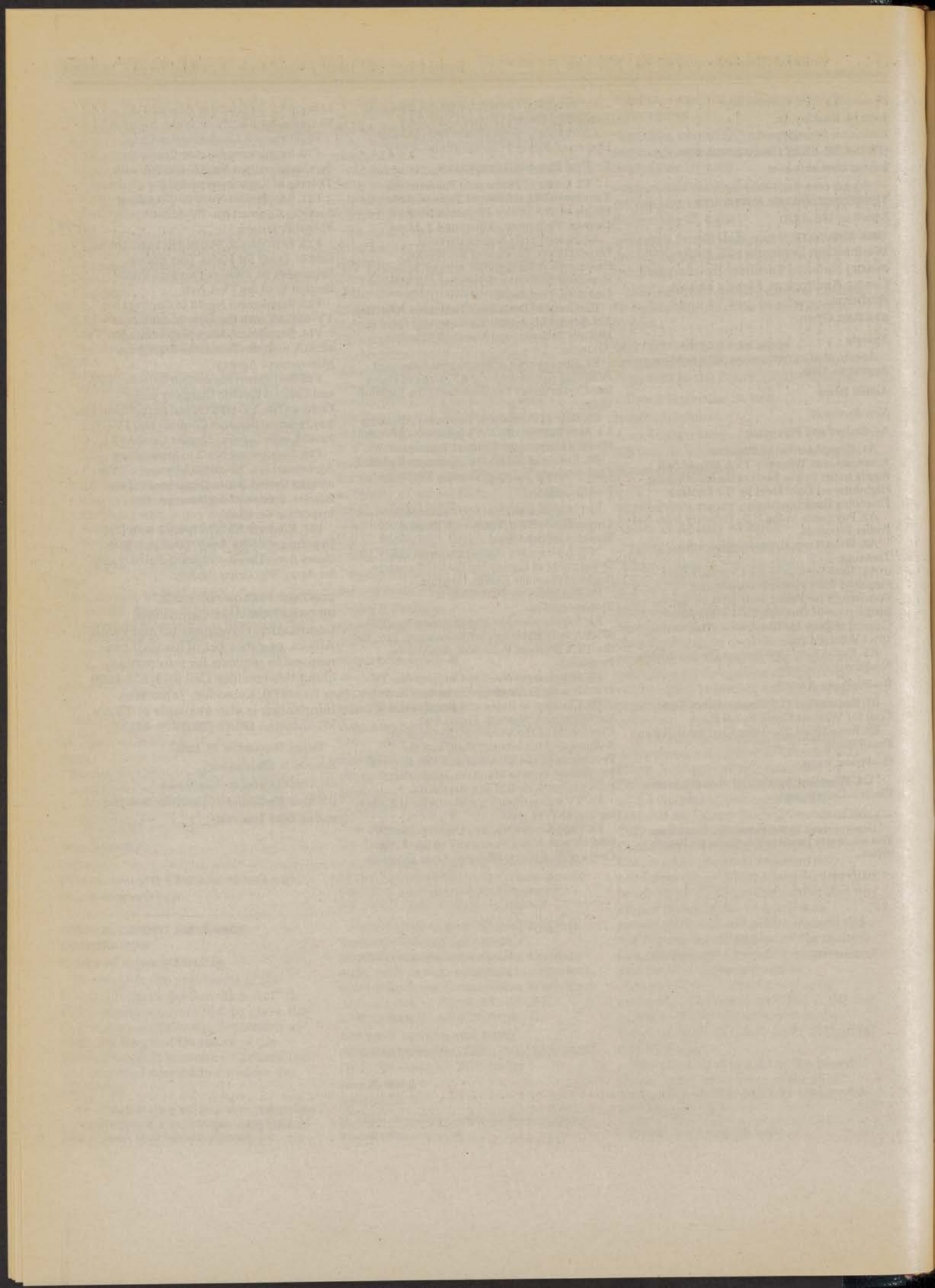
Dated: September 20, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89-22626 Filed 9-21-89; 9:49 am]

BILLING CODE 8120-01-M



Estes report Federal

Monday
September 25, 1989

Part II

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1765

Telephone Materials, Equipment, and Construction—Telephone Program; Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

Telephone Materials, Equipment, and Construction—Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds part 1765, Telephone Materials, Equipment, and Construction—Telephone Program, to 7 CFR chapter XVII of the Code of Federal Regulations. This new part sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds. All borrowers that are parties to the planning and construction of borrowers' telecommunication facilities and systems will be affected by this rule.

EFFECTIVE DATE: This final rule is effective September 25, 1989.

ADDRESS: Comments may be mailed to William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments received may be inspected in Room 2835 between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-8663. The Final Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in

domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and recordkeeping provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*) contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 0572-0062.

Public reporting burden for this collection of information is estimated to average 0.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0062), Washington, DC 20503.

Background

Currently, the policies and requirements for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds are contained in numerous REA publications including the following existing REA Bulletins:

- 320-15 Equal Employment Opportunity in Construction Financed with REA Loans.
- 340-1 Final Payments to Contractors, Engineers, and Architects—Telephone Program.
- 340-2 Payments to Architects, Engineers, Contractors, and Suppliers.

- 340-3 Coordination of Borrowers' Activities with Connecting Systems.
- 340-4 Scheduling of Work and Reporting of Progress.
- 344-1 Methods of Purchasing Materials and Equipment for Use on Systems of Telephone Borrowers.
- 344-3 "Buy American" Requirement.
- 380-1 Right-of-way and Title Procedures—Telephone.
- 380-3 Weekly Progress Report of Telephone Construction and Engineering Services.
- 381-1 Tabulation of Bids for Contract Construction of Telephone Outside Plant Facilities.
- 381-2 Telephone System Construction Contract, Labor and Materials, REA Form 515.
- 381-4 Closeout Documents, Telephone Construction Contract, Labor and Materials (Outside Plant).
- 381-7 Methods of Construction of Telephone Borrowers' Initial System Outside Plant Facilities.
- 381-8 Contract Construction, Telephone Borrowers' Initial System Outside Plant Facilities.
- 381-9 Amendments to Contracts for Construction or Installation of Telephone Borrowers' Facilities.
- 381-10 Subcontracts Under Contracts for Construction or Installation of Telephone Borrowers' Facilities.
- 381-11 Changes or Corrections in Line Construction.
- 381-13 Bidders' Qualifications.
- 382-1 Force Account Construction, Telephone Borrowers' Initial Systems.
- 382-2 Construction of Telephone System Improvements and Extensions by Work Order or Contract.
- 383-1 Preparation of Telephone System Plans and Specifications for Construction of Outside Plant.
- 383-4 Postloan Engineering Design Requirements for Supplemental Loans.
- 384-1 Purchasing and Installing Central Office Equipment.
- 384-2 Closeout Documents for Central Office Equipment Contracts.
- 384-3 Central Office Equipment Contracts and Specifications.
- 385-2 Purchasing and Installing Special Electronic Equipment.
- 385-3 Closeout Documents for Special Equipment Contracts.
- 385-4 Special Equipment Contracts and Specifications.
- 387-1 Preparation of Plans and Specifications for Construction of Telephone Borrowers' Buildings.
- 387-2 Contract to Construct Buildings, REA Form 257.
- 387-3 Final Documents Required to Close Out Construction of Buildings, Telephone Program.
- 387-4 Presentation of Building Plans and Specifications.
- 387-5 Contract Construction, Telephone Borrowers Buildings.

The Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR parts. When that is

accomplished, these Bulletins will be rescinded.

On August 18, 1988, REA published in the *Federal Register* proposed rule 7 CFR part 1765 at 53 FR 31346, Telephone Materials, Equipment, and Construction—Telephone Program, regarding the requirements and procedures to be followed by REA telephone borrowers for the purchase and installation of materials and equipment and the construction of telephone facilities with REA loan funds. In the proposed rule REA invited interested parties to file comments on or before September 19, 1988.

Comments

Comments and recommendations were received from the National Telephone Cooperative Association (NTCA); Telephone and Data Systems, Inc., (TDS), the parent company of 72 telephone systems which have received financing or are eligible for financing from the REA; American Telephone and Telegraph Company (AT&T); Mr. James R. Ebbitt, Assistant Inspector General for Audit, Office of Inspector General, United States Department of Agriculture; and, filing as a group, the United States Telephone Association (USTA), the National Rural Telecom Association (NRTA), and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO).

The comments are summarized as follows:

Several respondents commented that a 30-day comment period is not reasonable, a 60-day comment period should be granted for proposed agency regulations of this magnitude.

Response—The 30-day comment period was selected because of the deadline imposed by the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203.

Several respondents commented that the proposed rule is deficient on several points: First, it was claimed that REA is attempting to restrict funding for a purpose permitted by the Rural Electrification Act. Second, as a result of the wording of the proposed rule, many requirements are placed on engineers, contractors or other involved parties, who are not borrowers.

Response—First, this regulation does not address the criteria for loan purposes or amounts of funds to be included in a loan. These are addressed in 7 CFR part 1745. This regulation addresses only the requirements and procedures for accomplishing the purposes provided for in the approved loans. Second, several sections have been changed to place the requirements

on the borrowers and not on the architects, engineers, contractors, or other parties.

Several respondents commented that intermingling advice and requirements unnecessarily creates confusion and regulatory burdens for both borrowers and REA.

Response—REA is committed to the elimination of unnecessary requirements and advice for borrowers. REA believes, however, that it is appropriate to include advice in regulations when it will improve communications, prevent problems, or otherwise further effective program administration.

One respondent objected to the requirements for use of standard forms of contracts. They recommended that these be suggested forms only and be modified to allow greater flexibility and more freedom for borrowers and suppliers. They proposed a series of amendments to REA contracts.

Response—There are many reasons for using standard forms of contract. Standard forms are designed to comply with applicable Federal laws and regulations. They assure that the project is built to specifications and provides adequate loan security. Most parties are familiar with them. They are readily accepted by borrowers and contractors in all States and territories where REA lends. Their use promotes efficient and economical construction of facilities to the benefit of rural subscribers. The use of nonstandard contracts could lessen these benefits and increase the complexity and cost of program administration, resulting in delays.

One respondent recommended that timeframes be specified for REA response on borrower submissions of documents, such as plans and specifications, contracts, and amendments.

Response—REA is committed to responding in a timely manner to all documents and correspondence submitted, but because of seasonal variations in workload it is not possible for REA to state in regulations timeframes for document processing.

Several respondents commented that the regulation contains requirements that relate to REA forms and that these forms should be published with the rule.

Response—Virtually all borrowers, contractors, engineers, and equipment suppliers are familiar with REA's forms. The use of some forms is required in more than one regulation and it would be too costly to revise several regulations each time a form is changed. The forms are available from REA upon request.

Section 1765.1(d)(3)—Several respondents commented that it is

inconsistent with the RE Act for REA to withhold approval of the borrower's method of procurement and plans and specifications if, in REA's judgement, they will not effectively and efficiently further the extension or improvement of telephone service in rural areas or if they present unacceptable loan security risks to REA.

The loan documents require borrowers to provide area coverage; to follow REA engineering and construction standards; and to procure materials and equipment and construct facilities by the contract method, unless otherwise approved by REA. The subsection has been revised to state that approval will be withheld if the proposed method of procurement or P&S do not conform to REA engineering criteria or construction standards. The reference to effectively and efficiently furthering rural telephone service has been deleted.

Section 1765.2—One respondent commented that central office equipment also provides call origination functions.

Response—The definition for Central Office Equipment has been revised accordingly.

Several respondents criticized the definition for Engineer.

Response—New definitions for Architect and Engineer have been included.

Several respondents commented on the need for "interim financing" to be defined.

Response—The definition for Interim Financing has been included.

Several respondents commented that the term "unbalanced bid" should be better.

Response—The term "unbalanced bid" has been redefined in § 1765.2 of the final rule.

Section 1765.3 (c) and (d)—Several respondents commented that it is unnecessary to require the borrower and GFR to determine if an amendment to the LD is needed and obtain approval of such amendment.

Response—Section 1765.3 (c) and (d) state the procedure for deciding if the contemplated construction is consistent with the approved LD. Actual loan construction is rarely exactly as it was proposed in the LD. REA must determine if the borrower's desired construction is sufficiency consistent with the LD to qualify for financing under the loan. The most expedient way to determine this is for the GFR to meet with the borrower and review the construction plans, as required by § 1765.3 (c) and (d).

Section 1765.5(c)—Several respondents commented that no

objective criterion is provided by which a borrower can demonstrate it has the capability to perform major construction by the force account method.

Response—The final rule has been revised to specify REA's criteria for approval of the borrower to perform major construction by the force account method.

One respondent commented that conditions for force account construction should be eliminated because they are not required by the Act and would limit access to REA funds.

Response—This subsection does not limit REA funds. The loan documents specify that construction shall be by contract unless otherwise approved by REA. The subsection has been revised in the final rule as discussed above to set forth REA's criteria for approval to use the force account method.

Section 1765.6(c) and (d)—Several respondents commented that these subsections should deal only with what REA will finance, and not cover general requirements for purchase of materials and equipment. One respondent commented that subsection (c) should be amended by replacing the word "purchased" with the word "financed" because REA controls what it finances but not what a borrower purchases.

Response—Subsections (a)–(d) have been revised in the final rule to reflect the suggested change.

Section 1765.7(b)—Several respondents commented that 7 CFR part 1762 listing the REA forms of telecommunications contracts has not been published. Thus, there is no opportunity to comment on the appropriateness of a majority of the actual requirements contained in 7 CFR part 1765.

Response—7 CFR part 1762 final rule was published in the Federal Register on May 2, 1988. Copies of the contract forms are available as set forth in the CFR. REA is open to suggestions for revision of its forms.

Section 1765.7(f)(2)—One respondent commented that this subsection should permit the borrower and its vendor to negotiate the terms of the contract.

Response—This would make sealed competitive bidding virtually impossible. It would invalidate the borrower's and REA's price evaluation data. The borrower's and REA's attorneys would have to review every contract. This would consume the resources of borrowers, contractors, and REA.

One respondent recommended that the requirement of a liquidated damages provision in every contract be deleted.

Response—Although it is required that all contracts have a liquidated damages provision, the borrower

determines the liquidated damages amount to be specified. This amount can range from zero to whatever amount the borrower can justify. The contractor is not permitted to change the specified amount in a bid.

Section 1765.8(a)(1)—Several respondents commented that it is unnecessary to state that the GFR usually attends the bid opening.

Response—The final rule has been revised to require the borrower to notify the GFR of the bid date selected and invite the GFR to attend.

Section 1765.8(a)(2)—Several respondents commented that the subsection requires the engineer to submit to the borrower a list of prospective bidders and a recommendation as to which bidders are qualified. The requirement should simply indicate the borrower shall obtain a list of prospective bidders and a list of qualified bidders.

Response—The final rule has been so revised.

Section 1765.8(a)(5)—Several respondents commented that the regulation should state what specific conditions would justify a rebid.

Response—The final rule has been revised to state the specific conditions.

One respondent commented that the rebidding requirement should be deleted because there is no basis in the Act for it.

Response—The loan documents require the borrower to use competitive bidding unless otherwise approved by REA. REA believes that bidding with fewer than three bidders is not full free competitive bidding if other responsive bids were readily obtainable.

Section 1765.8(a)(6)—Several respondents commented that the regulation should not include advice to the borrower that it be able to contact its attorney at a bid opening.

Response—REA believes such advice is appropriate because experience indicates that questions often arise at the bid opening that require consultation with the borrower's attorney.

Section 1765.8(a)(7)—Several respondents commented that advisory language suggesting that the borrower's engineer review all bids and that the borrower allow bidders to make changes in certain circumstances should not be included in the final rule.

Response—REA believes this requirement is appropriate to ensure that all bidders are treated fairly and equitably. The final rule has been revised to require the borrower to make the determinations.

Sections 1765.8(a)(8), (9), and (10)—Several respondents commented that these procedures recite basic aspects of

competitive practices and need not be required. Furthermore, if REA intends to impose requirements, those requirements should be placed upon the borrower.

Response—REA believes these procedures should be required. The final rule has been revised to make the borrower responsible for these requirements.

Section 1765.8(a)(11)(i)—Several respondents commented that this subsection requires the engineer to recommend award to the low bidder.

Response—The final rule has been revised to require the borrower to obtain from the engineer the determination of the lowest responsive bid, a tabulation of all bids and the engineer's recommendation for award of the contract.

Section 1765.9(c)—Several respondents contended that the provision in REA Subcontract Form 282 holding the contractor fully responsible for the acts and omissions of the subcontractor obviates the need for this subsection.

REA believes reiterating the contract provision in this subsection is appropriate to inform all parties of the consequences of subcontracting.

Section 1765.9(d)—Several respondents contend that this subsection should not prohibit subcontractors from beginning construction prior to REA approval of the subcontract.

Response—The subcontract states work shall not start until REA has approved the subcontract. The final rule has been revised to clarify this.

Section 1765.10—Several respondents commented that recommending a preconstruction conference does not belong in the final rule.

Response—This subsection has been revised to make the preconstruction conference a requirement.

Section 1765.11(a)—One respondent recommends that REA permit more flexibility to borrowers and contractors for contract amendments.

Response—REA believes the approval conditions in this subsection are reasonable and necessary to ensure the integrity of contract procurement and to ensure funds are available to comply with the payment provisions of the contract.

Section 1765.11(b)—Several respondents commented that this subsection allows borrowers and contractors to execute contract amendments not meeting the criteria of § 1765.11(a).

Response—The final rule has been revised to clarify that prior REA

approval to execute contract amendments excluded by the § 1765.11(a) criteria is not required but the executed amendments do require REA approval.

Section 1765.11(c)—Several respondents commented that this subsection is advisory and should not be in the final rule.

Response—This subsection has been revised to make this a requirement for the borrower.

Subpart B

Section 1765.15(c)—Several respondents commented that this section should be eliminated.

Response—The criteria and requirements for including financing for buildings as a loan purpose are included in 7 CFR part 1745 and 7 CFR part 1749. This subsection has been deleted in the final rule.

Section 1765.15(f)—Several respondents commented that the requirement for sealed competitive bids should apply to the borrower.

Response—Subsection 1765.15(e) in the final rule has been revised to require the borrower to use the sealed competitive bid procedure except when an alternative procedure is allowed.

Section 1765.15(h)—Several respondents commented that REA should permit borrowers to perform building construction under more than one contract. One respondent commented this subsection should be eliminated because it is not required by the Act.

Response—Subsection 1765.15(g) in the final rule has been revised to require only the construction pertaining to the building structure to be included under one contract. The nonbuilding structure construction may be included in this contract or may be by separate contracts. It is not REA's intention to require that all buildings under a loan be placed under one contract.

Section 1765.16(a) and (b)—Several respondents commented that these subsections do not specify who shall prepare the P&S and complete the Form 257.

Response—Both sections have been revised in the final rule to place this requirement on the borrower.

Section 1765.16(a)(3)—One respondent commented that digital electronic switching and transmission apparatus require certain environmental parameters for proper operation. REA should make it a requirement for the building architect or engineer to coordinate the inclusion of the required environmental features in the detailed building plans or other suitable portions of the P&S.

Response—Section 1765.16(a)(3) has been revised to include this requirement.

Section 1765.16(b)(2)—One respondent commented that the sentence stating that the number of alternates shall be kept to a minimum should be eliminated because it is not required by the Act and because it is a subjective condition.

Response—REA believes this requirement is necessary for an orderly, straightforward, sealed competitive bid procedure. The requirement in the final rule places the responsibility on the borrower to keep the alternates to a minimum.

Section 1765.16(b)(3)—Several respondents commented that this provision is advisory and not needed and should not be included in the final rule.

Response—This subsection is not advisory. It contains requirements necessary to insure orderly bidding and protection of expensive electronic equipment. The subsection is retained in the final rule.

Section 1765.17(b)—Several respondents commented that REA's procedure for approving title is unnecessary, expensive, and burdensome. They proposed that Part 1765 be revised to take REA out of the title examination business.

Response—REA does not perform title examinations. REA reviews title examinations performed by others to establish evidence that the borrower has an interest in the property that is satisfactory to REA.

Section 1765.19(b)—Several respondents commented that the subsection does not specify who is required to obtain REA approval to do force account construction.

Response—The subsection has been revised to require the borrower to obtain this approval.

Section 1765.19(c)—Several respondents commented that the subsection does not specify who is required to prepare the P&S.

Response—The subsection has been revised to require the borrower to prepare the P&S.

Section 1765.19(d)(2) and (4)—Several respondents commented that the phrase "eligible for REA financing" is unnecessary because REA has already approved the building facilities in its loan approval.

Response—The subsection is intended to accommodate borrowers who need to construct a building that includes floor space approved in a loan and floor space not approved in a loan. As a convenience to borrowers, REA will approve FAP's which contain items that are not eligible for REA financing if the

borrower segregates costs to cover those items. Subsection (4) has been revised to require an estimate for each major construction item only when all of the building construction was not included in the proposed loan.

Section 1765.19(e)—Several respondents commented that this subsection states that force account construction should not be started until approved by REA, which is advisory.

Response—Section 1765.19(e) has been revised deleting the advisory language and stating that construction performed prior to REA approval may not be included in the loan.

Subpart C

Section 1765.26(d)—Several respondents commented that REA requires that bid alternates be kept to a minimum, but does not define "minimum," thereby leaving the final decision as to how many alternates are allowable to REA.

Response—This subsection was written to allow borrowers a degree of flexibility in requesting bid alternates. If "minimum" is defined in the rule, it might unnecessarily limit a borrower's choice of equipment options.

Section 1765.26(d)—One respondent proposed that the requirement be eliminated because it is not required by the REA Act and could limit access to loan funds.

Response—The requirement to limit bid alternates is for the purpose of protecting the integrity of the sealed competitive bidding procedure, which is essential to the economical provision of telephone service.

Section 1765.26(e)—Several respondents commented that this subsection requires sealed competitive bidding but does not state of whom REA requires it.

Response—The subsection has been revised to require the borrower to take sealed competitive bids, unless another procurement method has been approved by REA.

Section 1765.27(a)(3)—Several respondents commented that REA Form 522 should be published with this regulation if REA is requiring the quantity and type of spare parts be determined in accordance with specification.

Response—REA Form 522, General Specification for Digital, Stored Program Controlled Central Office Equipment, is incorporated by reference as listed in 7 CFR part 1772.

Section 1765.27(b)(2)—Several respondents commented that the effective status of the TE&CM as a binding document must be made clear if

it is to specify the requirements for preparation of detailed equipment specifications.

Response—The subsection has been revised to clarify that the TE&CM provides guidelines for preparation of the detailed equipment specifications. REA believes this advisory information is appropriate to minimize the burden and costs to the borrowers.

Section 1765.28(a)(2)(i) (G) and (K)—One respondent recommended that these subsections be expanded by listing some specific topics to be discussed.

Response—These subsections have been revised to include such topics.

Section 1765.28(a)(2)(vi)—Several respondents commented that the word "generally" indicates a subjective condition to the granting of approval by REA for the borrower to proceed when fewer than three bidders have been qualified.

Response—This subsection has been revised to clarify REA's intent. The word "generally" remains for the purpose of allowing borrowers and REA some flexibility for unforeseeable bidding difficulties.

Section 1765.28(b)—Several respondents commented that the statement that REA approval of the borrower's request to procure central office equipment through single source negotiation will be conditioned upon the borrower obtaining prices in line with current competitive prices should be deleted in the final rule.

Response—This statement has been deleted from § 1765.28(b), where it was intended as a condition to REA's approval of the borrower's request to negotiate. Similar wording has been inserted under § 1765.28(b)(7), where it is intended as a requirement for REA approval of a supplier's proposal. REA maintains a data base of central office equipment pricing for the purpose of assisting borrowers by making information available on market prices.

Section 1765.28(b)(4)—Several respondents commented that the subsection places a requirement on the supplier and that it should be revised to state that all proposals must be completed, dated, and signed.

Response—The subsection has been revised accordingly.

Section 1765.28(b)(5)—Several respondents commented that the subsection should be revised to state that the borrower shall obtain a recommendation from the engineer.

Response—The subsection has been revised accordingly.

Section 1765.28(c)—One respondent commented that as stated in this subsection REA's requirements for a software license do not fully address the

needs of the software vendor. The respondent listed examples of specific alleged deficiencies in REA's requirements.

Response—This subsection is not a software license. It is a list of REA's requirements for a software license. Suppliers will have requirements for software licenses and so may borrowers. From all these requirements a software license will have to be crafted that is acceptable to all parties. REA prefers not to write a software license because suppliers requirements vary and are subject to change.

Section 1765.28(c)(iv)—One respondent commented that it is not feasible to transfer ownership of software to the borrower in the event of support abandonment by a supplier. The respondent observed that many owners of switching products might become joint owners of a software package.

Response—This requirement will not come into play unless the supplier is unwilling or unable to provide software support, so a supplier would have to abandon the software to lose ownership of it. Once such abandonment has occurred, the borrower must at least have the right to modify the software and the means to do so. Transferring ownership and backup documentation is, in REA's view, the only way to ensure this.

Section 1765.28(c)(v)—One respondent commented that a software warranty of indefinite duration against errors and incompleteness is unreasonable and not standard in the industry.

Response—This has been revised to reduce the minimum warranty to 5 years, which should provide adequate protection to borrowers and REA.

Section 1765.28(c)—One respondent commented that the software license agreement should also include conditions involving changes in ownership of the telephone company.

Response—The subsection has been revised to clarify the rights under the licensing agreement that apply to the future owners of the telephone company as well as the present owner.

Section 1765.28(f)—One respondent commented that this subsection should be removed in its entirety as it represents an optional practice that is not required by the Act.

Response—REA believes this requirement is appropriate as it is a good business practice to prevent problems and reduce burdens for all parties.

Section 1765.29(d)—One respondent commented that when the equipment is provided under a Form 545 Contract (not including installation) the manufacturer is probably not required to participate in

the grounding system audit. REA should require the manufacturer to provide a detailed bonding and grounding plan that can be utilized by the engineer, borrower, or others responsible for the installation.

Response—A new subsection § 1765.27(a)(4) has been included in the final rule for the P&S to require such a plan. Subsection 1765.29(d) has been amended to require an audit of the bonding and grounding plan provided by the supplier of the equipment provided under Form 545 Contracts.

Subpart D

Section 1765.37(b)(5)—One respondent commented that REA should require that all materials furnished by the borrower under Supplement A be "REA Listed."

Response—This subsection has been revised to include this requirement, unless special REA approval is granted to use unlisted materials.

Section 1765.38(a)(3)(iv)—Several respondents commented that this subsection requires the engineer to prepare and distribute minutes of the pre-bid conference and feel that such a requirement is unnecessary.

Response—REA believes that pre-bid notes are necessary to establish a legal record of the construction project. The subsection has been revised to place the requirement on the borrower.

Section 1765.38(b)(3)(iii)—Several respondents commented that it should be made clear that it is the borrower's responsibility to obtain and distribute negotiation conference notes.

Response—This requirement has been clarified.

Section 1765.38(f)(1)—Several respondents commented that the requirement for obtaining material receipts should be placed on the borrower.

Response—The subsection has been revised to clarify this requirement.

Section 1765.38(f)(3)—Several respondents commented that the subsection requires the contractor to credit the borrower for furnished materials, whereas the requirement should be that the borrower obtain invoices showing the credit.

Response—This requirement has been clarified.

Section 1765.39(c)(2)—Several respondents commented that the subsection does not state who is responsible for preparing and distributing the contract closeout documents.

Response—The subsection has been revised to place this requirement on the borrower.

Subpart F

Section 1765.58(a)(2)—Several respondents commented that this subsection requires that proposals be received from three or more sellers, whereas it should state that the borrower or its agent shall seek at least three proposals.

Response—The subsection has been amended accordingly.

Section 1765.58(a)(6)—Several respondents commented that this subsection, which recommends that initial installation of special equipment be installed by the seller, is advisory and does not belong in the final rule.

Response—REA was inclined to make this a requirement because of past experience, but did not do so to allow borrowers flexibility. The recommendation has been retained in the final rule.

Section 1765.58(d)(1)(ii) and (iii)—Several respondents commented that these subsections require the contractor to perform inspections and furnish results to the borrower, whereas they should require the borrower to obtain the inspections.

Response—Subsections (ii) and (iii) have been combined into a new subsection (ii) clarifying the requirement.

Section 1765.58(d)(2)—One respondent commented that the seller should be required to furnish installation information to enable the borrower to perform all of the inspections and tests to determine that specifications requirements are met.

Response—A new subsection 1765.58(a)(1)(iv) has been added in the final rule to require a bonding and grounding plan and installation plans.

Appendix D—One respondent commented that Step 5 requires the REA Field Accountant to audit Form 281 and examine construction records "when required." They recommended that this be performed during the first loan fund audit after the final payment under the contract.

Response—Step 15 has been added which requires this audit and examination as recommended. Step 5, for audit and examination when requested by the GFR, has also been retained.

7 CFR part 1765 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1765

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA amends 7 CFR Chapter XVII by adding the following new part 1765:

PART 1765—TELEPHONE MATERIALS, EQUIPMENT AND CONSTRUCTION—TELEPHONE PROGRAM**Subpart A—General****Sec.**

- 1765.1 General.
- 1765.2 Definitions.
- 1765.3 Preconstruction review.
- 1765.4 Major and minor construction.
- 1765.5 Methods of major construction.
- 1765.6 Standards, specifications, and general requirements.
- 1765.7 Plans and specifications (P&S).
- 1765.8 Contract construction procedures.
- 1765.9 Subcontracts.
- 1765.10 Preconstruction conference.
- 1765.11 Contract amendments.
- 1765.12–1765.14 [Reserved]

Subpart B—Construction of Buildings

- 1765.15 General.
- 1765.16 Plans and specifications (P&S).
- 1765.17 Bidding procedure.
- 1765.18 Contract amendments.
- 1765.19 Force account procedures.
- 1765.20 Closeout procedures.
- 1765.21–1765.25 [Reserved]

Subpart C—Purchase and Installation of Central Office Equipment

- 1765.26 General.
- 1765.27 Plans and specifications (P&S).
- 1765.28 Procurement procedures.
- 1765.29 Closeout documents.
- 1765.30–1765.35 [Reserved]

Subpart D—Outside Plant Major Construction by Contract

- 1765.36 General.
- 1765.37 Plans and specifications (P&S).
- 1765.38 Procurement procedures.
- 1765.39 Closeout documents.
- 1765.40–1765.45 [Reserved]

Subpart E—Outside Plant Major Construction by Force Account

- 1765.46–1765.55 [Reserved]

Subpart F—Purchase and Installation of Special Equipment

- 1765.56 General.
- 1765.57 Contracts and specifications.
- 1765.58 Purchasing special equipment.
- 1765.59–1765.65 [Reserved]

Subpart G—Methods of Minor Construction

- 1765.66–1765.80 [Reserved]

Subpart H—Construction Certification**Program**

- 1765.81–1765.99 [Reserved]

Appendix A—Documents Required to Closeout Construction of Buildings**Appendix B—Documents Required to Closeout Central Office Equipment Contract****Appendix C—Documents Required to Closeout Telephone Construction Contract REA Form 515****Appendix D—Step-by-Step Procedure for Closing Out Telephone Construction Contract Labor and Materials, REA Form 515****Appendix E—[Reserved]****Appendix F—Documents Required to Closeout Special Equipment Contracts**

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

SUBPART A—General**§ 1765.1 General.**

(a) The standard REA Telephone Loan Documents contain provisions regarding procurement of materials and equipment and construction of telecommunication facilities by telephone borrowers. This part 1765 implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers for purchasing materials and equipment and construction of telecommunication facilities by contract or force account.

(b) The typical procedure followed in constructing a project financed by an REA loan begins with the prospective borrower obtaining the necessary preloan engineering and developing a complete loan application, including an LD (See 7 CFR part 1749). If a loan is approved and all prerequisites to advance of funds are satisfied, the borrower may proceed with the purchase and installation of materials and equipment and the construction of telephone facilities pursuant to this part 1765. Subpart A describes

(1) REA's general requirements with respect to steps to be taken after the loan is approved and before construction begins (See § 1765.3).

(2) REA requirements with respect to methods of construction (See §§ 1765.5 and 1765.6).

(3) REA requirements regarding sealed competitive bidding and negotiated bidding of construction contracts (See §§ 1765.6 and .9).

(4) REA standards for materials, equipment, and construction financed with loan funds (See § 1765.7), and

(5) REA requirements for subcontracts and contract amendments covering construction financed with loan funds (See §§ 1765.10 and .12).

(c) Each borrower is responsible for the construction of its facilities and for the procurement of materials and equipment that are best suited to its needs.

(d) If contracts, P&S, or other methods of procurement are subject to REA approval pursuant to the provisions of the loan contract, as implemented by this part, REA will review the documents or proposals submitted and notify the borrower in writing of approval or disapproval. REA may withhold approval if, in REA's judgment:

(1) The P&S or contract will not accomplish loan purposes.

(2) Provisions of the P&S or contract will add unnecessary expense to the project.

(3) The proposal, method of procurement, or P&S do not conform to REA engineering criteria or construction standards, or if they present unacceptable loan security risks to REA.

(4) The P&S or contract have been modified.

(e) The requirements and procedures covering procurement of architectural and engineering services are described in 7 CFR part 1763.

(f) Single copies of REA forms cited in this Part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250-1500. These REA forms may be reproduced.

§ 1765.2 Definitions.

For the purpose of this part 1765:

Alternate—A solicitation for a bid adjustment for a specified deviation from the Plans and Specifications.

Architect—A person registered as an architect in the state where construction is performed, or a person on the borrower's staff, approved by REA, authorized to perform architectural services.

Bid guarantee—A bid bond or certified check required of contractors bidding on construction work to ensure that the bidder, if successful, will furnish a satisfactory performance bond ensuring completion of work.

Central office building—The facility housing the central office equipment.

Central office equipment—Switching and signaling equipment that performs call origination and completion functions for subscribers.

Closeout documents—The documents required to certify satisfactory completion of all obligations under a contract or force account proposal.

Construction—Purchase and installation of telecommunications facilities in a borrower's system using loan funds.

Contract—The agreement between the borrower and an independent contractor covering the purchase, construction, or both of telephone facilities to be included in the borrower's telephone system.

Contract construction—Construction and installations performed using an REA contract form. See 7 CFR part 1762.

Engineer—A person registered as an engineer in the state where construction is performed, or a person on the borrower's staff, approved by REA, authorized to perform engineering services.

FAP (force account proposal)—The borrower's detailed plans submitted to REA for force account construction.

Force account construction—Construction performed by the borrower's employees under an REA approved FAP, with the borrower furnishing all materials, equipment, tools, and transportation.

FRS—REA Form 481 (OMB 0572-0023), Financial Requirement Statement.

GFR—REA General Field Representative.

Installation—The act of setting up or placing in position equipment for service or use in the borrower's system.

Interim construction—The purchase of equipment or the conduct of construction under an REA-approved plan of interim financing. See 7 CFR part 1749.

Interim financing—Funding for a project which REA has acknowledged may be included in a loan, should said loan be approved, but for which REA loan funds have not yet been made available.

Labor and materials—All the labor and materials required for construction.

LD (loan design)—Supporting data for a loan application. See 7 CFR part 1749.

Loan—Any loan made or guaranteed by REA. See 7 CFR part 1745.

Loan funds—Funds provided by REA through direct or guaranteed loans. See 7 CFR part 1754.

Major construction—A telephone plant project estimated to cost more than \$100,000, including all labor and materials.

Minor construction—A telephone plant project estimated to cost \$100,000 or less, including all labor and materials.

Minor errors or irregularities—A defect or variation in a seller's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

Negotiation—Any form of purchasing or contracting other than sealed competitive bidding. Any contract awarded without using the sealed competitive bidding procedure is a negotiated contract.

Outside plant—The facilities that conduct electrical or optical signals between the central office and the subscriber's network interface or between central offices.

Performance bond—A surety bond on a form satisfactory to REA guaranteeing the contractor's faithful performance of a contract.

P&S (plans and specifications)—An REA contract form, the appropriate specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of the installations to be made or construction to be performed.

Project—The construction or installation described in the P&S.

Responsive bid—A bid that complies with the requirements of the plans and specifications.

Sealed competitive bidding—A method of contracting that employs sealed competitive bids, public opening of bids, and award of the contract to the bidder submitting the lowest responsive bid. See § 1765.8.

Single source negotiation—Negotiating with a single source (contractor or seller).

Special equipment—Equipment used primarily for the transmission and enhancement of voice, data, carrier, radio and light signals, and other equipment and facilities, including incidental cable and other transmission equipment.

Subcontract—A secondary contract undertaking some of the obligations of a primary contract. Under all REA forms of contract, the primary contractor bears full responsibility for the performance of the subcontractor.

Unbalanced bid—A bid which contains pricing for a task or material that is significantly higher or lower than pricing for similar tasks or materials.

Work order construction—Minor construction performed by the borrower's employees, pursuant to its work order procedure, with the borrower furnishing all materials, equipment, tools, and transportation.

§ 1765.3 Preconstruction review.

(a) Prior REA approval must be obtained for any construction that does not conform to REA standards and specifications or the approved LD, such as construction of extensions to serve subscribers in areas not included in the LD (See 7 CFR part 1749). To obtain

approval, the borrower shall submit a written proposal containing:

(1) A description of the work, indicating any deviations from the approved LD or REA standards and specifications.

(2) An engineering study covering the deviations if there are changes in the design.

(3) A cost estimate for labor, engineering, materials, and overheads.

(b) Before any construction, including interim construction, is initiated, the GFR shall meet with the borrower to review the LD to determine if any significant changes have occurred since its approval by REA. It is important that the design and construction of the proposed facilities be based on the latest information on subscriber needs.

(c) If the borrower and GFR agree that there have been no significant changes, the borrower may proceed.

(d) If the GFR finds that the LD is no longer satisfactory, the borrower shall prepare an amendment to the LD incorporating the necessary revisions (See 7 CFR part 1749). The borrower must obtain REA approval of the LD amendment before proceeding with engineering activities on any project to be financed with loan funds.

§ 1765.4 Major and minor construction.

REA's general requirements for construction are set forth in this subpart A. Additional requirements and procedures for different types of major construction are presented in subparts B, C, D, E, and F (OMB #0572-0062). The requirements and procedures for minor construction are presented in subpart G. Borrowers may, at their option, follow the procedures in subparts B, C, D, E, and F for any minor construction.

§ 1765.5 Methods of major construction.

(a) All major construction projects financed by loan funds shall be performed pursuant to a contract approved by REA and awarded through sealed competitive bidding unless

(1) A specific exception is granted in subparts B, C, D, E, or F, or

(2) Written REA approval is obtained.

(b) *Contract construction.* (1) Whether the contractor is selected through sealed competitive bidding or negotiation, as approved by REA, the contract may not be awarded until REA approval of the award has been obtained.

(2) The requirements and procedures for sealed competitive bidding are presented in § 1765.8(a). The requirements and procedures for negotiation are presented in § 1765.8(b).

(c) *Force account construction.* To obtain REA approval of the force account method for major construction

the borrower must demonstrate its ability to perform major construction based on past force account construction which fully met REA construction standards and was as cost-effective as contract construction in the area. If the borrower has no record of past performance to support its request, but has adequate equipment and experienced personnel to perform the proposed construction, REA may approve a small trial project. The requirements and procedures for force account construction are presented in subparts B, C, E, and F.

§ 1765.6 Standards, specifications, and general requirements.

(a) Materials, equipment, and construction financed with loan funds must meet the standards and specifications established by REA. 7 CFR part 1772 lists the REA Bulletins containing the standards and specifications for telephone facilities. Materials and equipment meeting these standards are included on the List of Material Acceptable for Use on Telephone Systems of REA Borrowers, REA Bulletin 344-2. This bulletin may be obtained by subscription from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) The borrower may use REA loan funds to finance nonstandard construction materials or equipment only if approved by the REA Area Director prior to purchase or commencement of construction.

(c) Only new materials and equipment may be financed with loan funds, unless otherwise approved by REA.

(d) All materials and equipment financed with loan funds are subject to the "Buy American" provision (7 U.S.C. 901 *et seq.* as amended in 1938).

§ 1765.7 Plans and specifications (P&S).

(a) The P&S consist of an REA contract form, the appropriate REA specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of what is included in the construction.

(b) 7 CFR part 1762 provides a list of the REA forms of telecommunications contracts for use in purchasing telephone materials and equipment and for constructing telephone facilities with loan funds. Also listed is the source where copies may be obtained.

(c) The appropriate standards and specifications listed in 7 CFR part 1772 shall be included in the P&S. When REA has not prepared standards and specifications, the borrower shall use general engineering requirements and

functional specifications prepared by the borrower's engineer and approved by REA.

(d) The P&S shall be based on the LD approved by REA. Section 1765.3 presents the requirements and procedures for obtaining REA approval for construction that does not conform to the LD approved by REA.

(e) REA approval of the P&S is required for major construction but not for minor construction, except as noted in subpart B.

(f) REA will approve only contracts that will provide for at least the following requirements.

(1) *Equal employment opportunity provision.* If this provision is not already in the contract, REA Contract Form 270, Equal Opportunity Addendum, shall be attached and made a part of the contract.

(2) *Liquidated damages provision.* (i) If not covered by the contract, an appropriate liquidated damages provision, in a form prescribed by REA, shall be included and made a part of the contract.

(ii) The liquidated damages must be based upon the borrower's best estimate of the damages it would incur as a result of the contractor's default.

(3) *Insurance and bond requirements.* (i) The insurance provision shall provide coverage as required by 7 CFR 1788.

(ii) A contractor's bond shall be furnished as required by 7 CFR part 1788.

(iii) The borrower is responsible for ensuring that its contractor complies with the insurance and bond requirements.

(4) *Software license provision.* If the equipment being purchased involves software, the contract shall contain a software provision requiring a licensing agreement which grants the borrower the right to use the software subject to reasonable terms and conditions.

§ 1765.8 Contract construction procedures.

(a) *Sealed, competitive bidding—(1) Bid opening date:* Upon approval of the P&S by REA, the borrower shall schedule a bid opening date. In setting the date sufficient time should be allowed for bidders to examine the project site and prepare their bids. The borrower shall notify the GFR of the bid date selected and invite the GFR to attend.

(2) *Invitations to bid:* The borrower is responsible for sending invitations to prospective bidders and taking any other action necessary to procure full, free, and competitive bidding. The borrower should obtain from its

engineer a list of prospective bidders and a recommendation indicating which bidders are considered qualified. The minimum number of contractors to be invited to bid on contracts for various types of facilities is set forth in subparts B, C, D, or F.

(3) *Qualifying bidders:* If the notice and instructions to bidders require that bidders show evidence of meeting certain requirements, the borrower shall qualify bidders before issuing P&S to them. Procedures for qualifying bidders are contained in subparts B, C and D.

(4) *Receipt of bids:* The borrower shall write on the outside envelope of any bid or bid amendment, the date and time the bid was received. Any bid received from an unqualified bidder or after the time specified for opening shall be returned promptly to the bidder unopened.

(5) *Procedure when fewer than three bids are received:* If fewer than three valid bids are received, the borrower shall consult with REA to determine whether the bids are to be opened or returned unopened. REA requires that the project be rebid if fewer than three bids are received and REA determines that one or more other bidders with an express interest in bidding is available and could meet the bid requirements, but was not invited to bid. REA shall also require rebidding if it is found that qualified bidders were discouraged from bidding by unreasonable bid requirements (such as late notification to bidders) or if the borrower fails to follow the bid procedure.

(6) *Conduct of bid openings:* The borrower shall conduct bid openings open to the public. The borrower should be able to contact its attorney for immediate consultation.

(7) *Review of bids:* The borrower shall review all bids prior to reading any bid results to determine that:

(i) The bid guarantees are adequate.
(ii) All minor errors or irregularities made through inadvertence are corrected or waived. Failing this, the bid shall be rejected as nonresponsive.

(iii) In the event of non-minor errors or irregularities, the bid is rejected and the bid price not disclosed.

(8) *Reading of bids:* Bid prices shall not be read until the borrower has reviewed all bids to determine if there are any minor errors or irregularities that may affect the recommendation as to award. These shall be made public at the same time the bid price is announced.

(9) *Evaluating bids:* The borrower shall consider the same alternates in all bids in determining the low bid.

(10) *Rejection:* The borrower shall reject:

(i) All bids if quoted prices are not acceptable or if the specifications were ambiguous and resulted in bidders having different interpretations of the requirements.

(ii) Any bid that is not responsive, or is incomplete, or submitted by an unqualified bidder, or unbalanced between labor and materials or other respects.

(11) *Award of contract:* (i) The borrower shall obtain from the engineer the determination of the lowest responsive bid, a tabulation of all bids and the engineer's recommendation for award of the contract.

(ii) The borrower shall award the contract to the lowest responsive bidder.

(iii) The borrower shall send to REA for consideration of approval of the award:

(A) Two copies of the low bid.
(B) The engineer's recommendation and the tabulation of all bids.
(C) Evidence of acceptance of the low bid by the borrower, such as:
(1) Certified copy of board resolution or

(2) letter or telegram to REA signed by a properly authorized corporate official.

(12) *Execution of contract:* (i) Upon approval of the accepted bid by REA, the borrower shall submit to REA three copies of the contract executed by the contractor and borrower.

(ii) If REA approves the contract, it shall return one copy to the borrower and send one copy to the contractor.

(b) *Negotiated construction contracts.*

(1) For the construction of certain facilities the borrower may negotiate a contract rather than solicit sealed competitive bids. Refer to the appropriate subparts C, D, or F for specific requirements and procedures.

(2) For negotiated purchases, borrowers shall use the same REA contract forms and standards and specifications as for sealed competitive bidding.

(3) After a satisfactory negotiated proposal has been obtained, the borrower shall submit it to REA for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(4) Upon approval of the negotiated proposal by REA, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to REA for approval.

(5) Upon approval, REA shall return one copy of the contract to the borrower and one copy to the contractor.

§ 1765.9 Subcontracts.

(a) Each REA construction contract form (Forms 257, 397, 515, and 525) contains provisions for subcontracting.

Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

(b) REA Form 282, subcontract, shall be used for subcontracts under construction and installation contracts.

(1) Minor modifications or additions may be made to the subcontract form, as long as they do not change the intent of the primary contract. Any alterations to the subcontract shall be initialed and dated by the persons executing the subcontract.

(2) Subcontracts shall be prepared in quadruplicate and all copies executed by the contractor and subcontractor and consented to by the borrower and surety, if any.

(3) Four executed copies of the subcontract shall be forwarded to REA for approval. Upon approval, one copy each will be sent to the borrower, contractor, and subcontractor.

(c) As stated in each REA contract form, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

(d) As stated in the contract, construction shall not be performed by the subcontractor before approval of the subcontract by REA.

§ 1765.10 Preconstruction conference.

The borrower shall conduct a conference, attended by the borrower, contractor, and resident engineer prior to the beginning of construction to provide an opportunity to discuss and agree on responsibilities, procedures, practices, and methods before the work begins. The borrower shall provide each participant with a copy of the conference results. The GFR shall be invited to attend this conference.

§ 1765.11 Contract amendments.

(a) The borrower must obtain REA approval before execution of any amendment to a contract if

(1) The amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment,

(2) The amendment increases the amount to be paid under the contract by 20% or more, or

(3) After amendment, the amount of the contract will be \$100,000 or more.

(b) Prior REA approval to execute other contract amendments is not required. These amendments are to be submitted after execution to REA for approval.

(c) For each amendment executed, the borrower shall make certain that:

(1) The contractor's bond covers the additional work to be performed. If the amendment by itself (or together with preceding amendments) increases the original contract price by 20% or more, a bond extension will be required to bring the penal sum of the bond to the total amended contract price.

(2) If an amendment covers construction in a county or state not included in the original contract, the borrower and contractor are licensed to do business in that location.

(d) Amendments are to be submitted in triplicate to REA for approval with a copy of the board resolution or a letter signed by an authorized corporate official.

§ 1765.12-1765.14 [Reserved]

Subpart B—Construction of Buildings

§ 1765.15 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in constructing central office, warehouse, and garage buildings with loan funds.

(b) Terms used in this subpart are defined in § 1765.2.

(c) All plans and specifications for buildings to be constructed with loan funds are subject to the approval of REA. Refer to § 1765.16 for further instructions.

(d) REA Contract Form 257, Contract to Construct Buildings, shall be used for the construction of all central office, warehouse, and garage buildings with loan funds. Refer to § 1765.16 (b) and (c) for further instructions.

(e) The borrower shall use the sealed competitive bid procedure for all building construction, except for:

(1) Minor construction using subpart G procedures.

(2) Major construction, where the borrower has received advanced approval to perform the construction by force account.

Refer to §§ 1765.17 and 1765.19 for further instructions.

(f) The site location, design, and construction of the facilities must comply with all applicable laws and regulations, including:

(1) Public Law 90-480 (42 U.S.C. 4151) (Access to Physically Handicapped), which requires certain buildings financed with Federal funds be designed and constructed to be accessible to the physically handicapped.

(2) Public Law 91-596 (29 U.S.C. 651) the Occupational Safety and Health Act

of 1970. OSHA issues rules and regulations covering occupational safety and health standards for buildings. These regulations are codified in 29 CFR chapter XVII.

(3) 7 CFR part 1794, which provides for compliance with the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508) implementing the procedural provisions of NEPA, as well as REA's conformance with other laws, regulations, and Executive Orders regarding environmental protection.

(g) All construction pertaining to the building structure shall be performed under one contract. Separate contracts may be used for planting shrubbery, surfacing of roads and parking areas, and other identifiable parts of the project not pertaining to the building structure. These separate contracts shall also be subject to REA approval as described in this subpart B.

(h) The borrower is responsible for submitting evidence, satisfactory to REA, establishing that clear title to the building site has been obtained. REA will not approve the construction contract until it has given title clearance.

§ 1765.16 Plans and specifications (P&S).

(a) The borrower shall prepare P&S for construction of all buildings. Each set of P&S shall include:

(1) REA Contract Form 257, Contract to Construct Buildings, completed to the extent explained in § 1765.16(b).

(2) Complete and detailed specifications covering materials and workmanship.

(3) A detailed building plan. Where the building is to house electronic apparatus, the detailed plan or specifications shall include the equipment environmental requirements and special equipment required.

(4) A site plan for each building showing the building location and giving the legal description of the site. Sufficient information must be provided for the site so that it can be identified as the same property on which title opinion was submitted to REA. The legal description shall be typed on the site plan. The borrower shall also furnish topographical information and a description of any proposed site development work and show proposed connections for public utilities.

(b) REA Contract Form 257 shall be completed by the borrower or its designated agent as follows:

(1) *List of names or kinds of buildings and locations*—Site plan and specifications must be identified with the appropriate building.

(2) *Alternates*—The borrower shall keep the number of alternates to a minimum. Items for which alternates are to be taken shall be fully described on a separate sheet in the specifications and the details shown on the plans, when necessary, and identified by the alternate number. The Notice and Instructions to Bidders shall explain how bids will be evaluated with respect to alternates.

(3) *Time for construction*—A reasonable time for completion of construction, considering local conditions, shall be determined by the borrower and inserted in the space provided. Too short a construction period may discourage bidders or influence their bids. Completion of the building, where central office equipment is involved, shall be coordinated with delivery of the equipment. The time of completion shall allow adequate drying time before the central office equipment is stored or installed in the building.

(c) Two sets of the building plans and specifications shall be prepared and submitted to the GFR.

§ 1765.17 Bidding procedure.

Upon REA approval of the P&S, the borrower shall proceed as follows:

(a) Bid documents shall consist of a copy of the approved P&S, including REA Contract Form 257, completed in accordance with the instructions on the cover of the form and the plot plans showing site development details. For contracts in amounts of \$100,000 or less, the borrower must specify in the Notice and Instructions to Bidders whether the contractor will be required to furnish a performance bond or a builder's risk policy.

(b) The borrower shall determine that title to the real estate has been approved by REA before the invitations to bid are released.

(c) The borrower shall set the time for opening of bids, allowing ample time for bidders to prepare bids.

(d) The borrower shall solicit bids as set forth in § 1765.8(a)(2). Invitations shall be sent to at least six prospective bidders.

(e) The borrower shall conduct bid opening and award of contract in accordance with the procedure set forth in § 1765.8(a).

§ 1765.18 Contract amendments.

(a) The general requirements for contract amendments are set forth in § 1765.11.

(b) The borrower shall prepare construction contract amendments on REA Contract Form 238, Construction or Equipment Contract Amendments. See 7

CFR part 1762 to obtain copies of Form 238.

§ 1765.19 Force account procedures.

(a) The procedures outlined in subpart G may be used for minor construction of buildings.

(b) The borrower must obtain REA approval of the force account method of construction of buildings in advance in order to obtain REA financing.

(c) The borrower shall prepare the P&S in accordance with § 1765.16.

(d) Prior to any construction activity or the purchase of materials or equipment, the borrower shall submit the FAP in duplicate to REA, accompanied by a resolution indicating approval of the board of directors of the borrower or a letter signed by an authorized corporate official. The proposal shall include:

(1) A Copy of the P&S.

(2) An itemized list of all items of materials required for construction.

(3) A construction schedule showing the estimated construction period for each major construction item.

(4) An estimate of the material and labor and other costs for any construction item not provided for in the approved loan.

(e) Force Account construction to be financed with loan funds shall not be started until REA approval has been received by the borrower.

§ 1765.20 Closeout procedures.

(a) This section outlines the procedure to be followed to close out REA Contract Form 257 (Contract to Construct Buildings) and construction or rehabilitation performed by the force account method.

(b) REA Form 257 contract. (1) Whenever changes were made in the plans and specifications which did not require an amendment under conditions set forth in § 1765.11 a final contract amendment showing the changes shall be prepared and submitted to REA with the closeout documents.

(2) Immediately after completion of contract construction, including cleanup, the borrower shall:

(i) Arrange with its engineer, contractor, and the GFR for final inspection of the project.

(ii) Furnish the contractor a summary of corrections or additions required to complete the project in accordance with the plans and specifications and the contract, and any contract amendments required to cover the corrections or additions.

(iii) Arrange, upon completion of the corrections by the contractor, to have its engineer prepare or obtain the documents listed in Appendix A which

are required for closeout of contract construction.

(iv) Make distribution of the completed documents as indicated in Appendix A.

(c) Upon completion of force account construction, the borrower shall:

(1) Arrange with its architect or engineer and the GFR for final inspection of the project.

(2) Complete, with the assistance of its engineer, the documents listed in Appendix A that are required for the closeout of force account construction.

(3) Make distribution of the completed documents as indicated in Appendix A.

(d) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.21-1765.25 [Reserved]

Subpart C—Purchase and Installation of Central Office Equipment

§ 1765.26 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing central office equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1765.2 and REA Contract Forms 525 and 545.

(c) Borrowers shall use REA Contract Form 525, Central Office Equipment Contract (Including Installation), when the firm supplying the equipment will install it and REA Contract Form 545, Central Office Equipment Contract (Not Including Installation) when the supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

(d) Alternates, if any, specified in the P&S shall be kept to a minimum.

(e) The borrower shall take sealed competitive bids for all central office equipment to be purchased under REA Contract Form 525 or 545 using the procedure set forth in § 1765.28(a), unless REA approval to negotiate is obtained.

(f) The borrower may request permission to negotiate with a single supplier for additional central offices to standardize equipment on a system basis. REA approval to negotiate must be obtained before release of the plans and specifications to the supplier. Except for remote switching terminals associated with an existing central office, REA will not approve negotiation with a non-domestic manufacturer for the purpose of standardization because such a purchase does not meet the RE Act "Buy American" provisions.

(g) Materials and equipment must meet the standards and general specifications approved by REA. Materials and equipment included in REA Bulletin 344-2 "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" have been accepted as meeting these requirements. If the equipment is not included in the "List of Materials" but has been approved for field trial installation, the borrower must in each instance obtain field trial approval from REA prior to entering into any agreement with a supplier.

(h) Only new equipment shall be purchased unless otherwise approved by REA.

(i) All purchases of materials and equipment are subject to the "Buy American" requirements.

(j) If the sealed competitive bid procedure is followed, negotiation after bid opening will not be permitted.

§ 1765.27 Plans and specifications (P&S).

(a) General. (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) The P&S shall provide for a complement of spare parts to be provided to the borrower. The quantity and type of spare parts shall be determined in accordance with the provisions in REA Form 522 "General Specification for Digital, Stored Program Controlled Central Office Equipment."

(4) P&S for equipment to be provided under a Form 545 contract shall require the supplier to provide specific installation information and a detailed bonding and grounding plan to be utilized by the engineer, borrower, and others responsible for the installation of the equipment.

(b) Preparation of P&S. (1) The P&S shall include REA Contract Form 525 or 545, Notice and Instructions to Bidders, specifications for the required equipment for each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

(2) Guidelines for the preparation of the detailed equipment specifications are contained in the Telecommunications Engineering and Construction Manual (TE&CM), which is available from REA.

(c) Submission of P&S. (1) Two sets of the P&S shall be submitted to the GFR for REA review.

(2) REA will review the P&S and notify the borrower of approval or disapproval.

(3) After approval of the P&S, one copy will be returned to the borrower.

§ 1765.28 Procurement procedures.

(a) *Sealed competitive bidding.* Sealed competitive bidding of central office equipment shall be in two steps: presentation and evaluation of suppliers' technical proposals, and compliance with the sealed competitive bidding procedure set forth in § 1765.8(a). The procedure is as follows:

(1) *Solicitation of bids.* (i) After REA approval of the specifications and equipment requirements, the borrower shall send "Notice and Instructions to Bidders" to suppliers selected by the borrower with central office equipment included in the current "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers." This "Notice" may also be sent to suppliers of non-domestic equipment currently accepted by REA as meeting REA technical standards. With REA written approval, the "Notice" may also be sent to suppliers of central office equipment accepted for field trial.

(ii) The "Notice" must set forth the method of evaluating bids and must require the submission of equipment lists and traffic calculations with the bids.

(iii) REA Contract Forms 525 or 545 shall be used, except that the "Notice" shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

(iv) The borrower shall solicit bids as set forth in § 1765.8(a)(2). The "Notice" shall be sent to at least three prospective bidders. A copy of the "Notice" and a list of such bidders shall be sent to REA.

(v) At the request of an invited supplier, the borrower shall provide two copies of the approved P&S.

(2) *Technical Sessions.* (i) The borrower shall schedule individual technical sessions by the suppliers, notify each supplier of its scheduled date and time, and request the following be available at the technical session:

(A) Lists of equipment, material and software.

(B) Proposed floor plan.

(C) Power and heat dissipation calculations.

(D) List of exceptions to plans and specifications.

(E) Protection and grounding requirements.

(F) Description of how office administration, maintenance and traffic collection are handled with step-by-step examples and printouts.

(G) Explanation of processor and/or memory expansion required to meet ultimate size. This shall include discussions of software, processor memory, and hardware additions needed for line additions and the introduction of various future services; the relative costs of installing the necessary hardware and software initially as compared with the anticipated cost if installed at the time when the future services are to be offered.

(H) Description of how special equipment such as loop tests, volunteer fire alarm circuit, line load control, etc., will function.

(I) Description of method for translating initial office administration information into machine language, and proposal as to whether it will be done by the borrower or by the supplier.

(J) Proposed software license agreement, and a supplier's statement as to whether it is of a form that has previously been accepted by the borrower and approved by the Administrator.

(K) Any other items pertinent to the technical proposal, such as information regarding changes that have been made in hardware and software of the equipment that is of like manufacture to that presently in operation in the borrower's system. This shall include requirements for additional spare parts or training which have developed as a result of significant change in system device technology.

(ii) The borrower shall review in detail all exceptions to the P&S. No exceptions will be accepted unless all bidders are notified, in writing, of the change in the specifications and permitted to incorporate the change in their proposal.

(iii) The borrower shall review the proposed software licensing agreement. If the proposed software licensing agreement has not been approved previously by REA, the borrower must obtain REA approval prior to accepting a proposal from that supplier. If prior REA approval is in doubt, REA is to be consulted. Refer to § 1765.28(c) for software license agreement requirements.

(iv) If the technical proposal is not responsive, the borrower shall notify the supplier, in writing, that its proposal will not be given further consideration and why.

(v) Changes in the P&S resulting from the technical sessions shall be subject to

REA's review and approval.

(vi) After evaluation of the technical proposals, sealed bids shall be solicited from only those bidders whose technical proposals meet the P&S requirements. When fewer than three bidders are qualified to bid, REA approval must be obtained to proceed. Generally, REA will grant this approval only if all suppliers currently listed in the "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" were invited to submit technical proposals.

(vii) The borrower shall invite the GFR to attend the technical sessions.

(3) *Bidding and award of contract:* (i) All bids must be completed, dated, and signed prior to submission.

(ii) The bid opening and award of contract shall be conducted in accordance with the procedure set forth in § 1765.8(a).

(iii) The spare parts bid shall always be priced separately and added to the base bid when determining the low bidder.

(b) *Single source negotiated procurement.* If REA has approved the borrower's request to procure central office equipment through single source negotiation in accordance with requirements contained in § 1765.26(f), the borrower shall proceed in accordance with this subsection.

(1) After REA approval of the P&S and equipment requirements, the borrower shall send two complete copies of the approved P&S to the supplier and request that a proposal be submitted.

(2) The borrower shall schedule a time and date for a technical session by the supplier and request that the items listed in § 1765.28(a)(2)(i) be available at the technical session. In addition to these items, the supplier shall be requested to provide a description of the exact differences in hardware and software between the borrower's existing equipment and the proposed equipment so that the borrower can determine spare parts interchangeability, need for retraining, and the compatibility of administration of the old and new equipment.

(3) Changes in the P&S resulting from the technical session shall be subject to REA's review and approval.

(4) The submitted proposal shall be based on the agreed-upon results of the technical evaluation and must be complete, dated, and signed.

(5) The borrower shall obtain an award recommendation from its engineer based upon the engineer's detailed review of the proposal.

(6) The following shall be sent to REA for review and approval:

(i) A copy of the engineer's recommendation to the borrower, and
 (ii) Evidence of acceptance of the proposal by the borrower, such as
 (A) A certified copy of the board resolution, or

(B) A letter to REA signed by an authorized corporate official.

(7) REA approval of the proposal will be conditioned upon the borrower obtaining prices that are consistent with current competitive prices. Upon REA approval of the proposal, three copies of the contract shall be prepared with all specifications and proposal documents, and performance bonds, to be executed by the supplier and borrower.

(8) The three complete, executed contracts shall be sent to the REA Area Engineering Branch Chief for approval.

(9) If REA approves the contract, one copy will be returned to the borrower and one copy will be sent to the supplier.

(10) Installation of the central office equipment and materials provided under REA Contract Form 545 may be made in accordance with subpart G, if applicable, or by an approved Force Account Proposal (FAP).

(c) *Software license agreement.* (1) For a software licensing agreement to be made a part of an REA-financed central office equipment contract, the agreement must be accepted by the borrower and approved by REA. REA will approve only those licensing agreements which do not impair loan security or REA central office system service objectives specified in REA Form 522 "General Specification for Digital, Stored Program Controlled Central Office Equipment." Therefore, licensing agreements will not be approved if they impair the borrower's ability to operate, maintain and administer the equipment covered by the licensing agreement within the borrower's system, or unreasonably limit the borrower's or REA's ability to sell the equipment. Generally, this will require that the borrower, whether under present or future ownership, have the following rights under the licensing agreement:

(i) The borrower may reproduce or copy the software and related material in limited quantity solely for its use in operating, maintaining, and administering the equipment covered by the licensing agreement, and also for training purposes.

(ii) The borrower may reuse the equipment with its accompanying software at another location within its system.

(iii) The borrower and REA, or its assignees, may transfer the software

licensing agreement with the equipment if the equipment is sold.

(iv) In the event the licensor becomes unwilling or unable to furnish software support, the licensor shall upon written request of the borrower, provide with greatest possible dispatch all software back-up documentation, including proprietary information. The borrower shall be permitted full use of all software and documentation as long as the equipment is operational. In this event, the borrower may modify the software for feature enhancement or proper equipment operation, and becomes the owner of such modifications.

(v) The software licensing agreement shall include a software warranty of a minimum of 5 years against errors and incompleteness.

(2) The licensing agreement may contain additional provisions subject to the approval of the borrower, the licensor, and REA.

(d) *Contract amendments.* (1) The general requirements for contract amendments are set forth in § 1765.11.

(2) Equipment contract amendments shall be prepared on REA Contract Form 238, Construction or Equipment Contract Amendments.

(e) *Additions.* When additions to existing central office equipment are required:

(1) A proposal shall be requested from the supplier.

(2) The borrower shall prepare a plan containing an outline of the proposed use of the equipment, the proposal from the supplier and an estimate of the installation cost, and submit it to the GFR.

(3) After REA approval of the supplier's proposal and the borrower's plan, the purchase may be made using REA Contract Form 545 or, when applicable, the procedures contained in subpart G.

(4) If the purchase is to be made by contract, three executed copies of the contract with attachments are to be submitted to the REA.

(5) Installation of the central office equipment and materials procured by REA Contract Form 545 may be made in accordance with subpart G, if applicable, or by an approved FAP.

(f) *Preinstallation conference.* REA recommends, but does not require, that the borrower hold a preinstallation conference, attended by the borrower, its engineer, equipment installers, and if possible the GFR, prior to the beginning of the installation of the central office equipment.

§ 1765.29 Closeout documents.

Closeout of REA Contract Form 525, Central Office Equipment Contract (Including Installation), and REA Contract Form 545, Central Office Equipment Contract (Not Including Installation), shall be conducted as follows:

(a) *Contract amendments.* The borrower shall prepare and arrange for the execution and submission to REA of any required contract amendments so that any changes in either contract will have been approved prior to the time the closeout documents are prepared. REA Contract Form 238, Construction or Equipment Contract Amendment, shall be used for this purpose.

(b) *Taxes.* Under the terms of REA Contract Forms 525 and 545, the bid prices do not include any amounts which are or may be payable by the bidder or the borrower on account of taxes imposed upon the sale, purchase or use of equipment, material and software covered by the contracts. If any such tax is paid by the bidder, the contract requires that the amount is to be stated separately on all invoices and paid by the borrower.

(c) *Acceptance tests.* The borrower will perform acceptance tests in accordance with guidelines contained in the applicable TE&CM sections, as a part of the partial closeout and final closeout of REA Contract Form 525.

(d) *Grounding system audit.* A grounding system audit shall be performed and found acceptable for equipment provided under Form 525 and 545 Contracts, prior to placing a central office or remote switching terminal into full service operation. The audits are to be conducted in accordance with guidelines contained in the applicable sections of REA Form 522 "General Specification for Digital, Stored Program Controlled Central Office Equipment." The audits shall be performed by the contractor and borrower for Form 525 equipment and by the borrower for Form 545 equipment.

(e) *Partial Closeout Procedure.* Under conditions set forth in REA Contract Form 525, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project where the contractor is to receive such payment, the procedure contained in the applicable sections of REA Contract Form 525 shall be followed. In addition to complying with the appropriate partial closeout procedure contained in

REA Contract Form 525, the borrower shall:

(1) Assemble and distribute the closeout documents specified in Appendix B.

(2) Submit one copy of Form 754 to REA with the FRS, requesting the remaining funds due the contractor on the central offices and associated remote switching terminals involved.

(3) On receipt of the advance of loan funds, make prompt payment to the contractor.

(f) *Final Contract Closeout Procedure.* The documents required for the final closeout of the central office equipment contracts, REA Contract Forms 525 and 545, are listed in Appendix B, which also indicates the number of copies and their distribution. The procedure to be followed is outlined below:

(1) The borrower shall:

(i) Immediately following completion of the last central office equipment installation, arrange with the contractor's installer, connecting company (where necessary), and the GFR for performance of the acceptance tests of offices not previously tested. The date for testing should be established so that the installer will not be required to return to the site for the sole purpose of assisting in these tests. Acceptance tests shall be performed within 45 days of completion of the installation, unless otherwise requested in writing by the contractor and approved in writing by the borrower.

(ii) When the acceptance tests have been satisfactorily completed and the contractor has corrected all the discrepancies:

(A) Prepare and assemble the documents listed in Appendix B, Documents Required to Close Out Central Office Equipment Contracts.

(B) Notify the GFR that the project is ready for final REA inspection.

(iii) Make the documents listed in Appendix B available for GFR review on the date of final inspection.

(iv) Distribute the documents as indicated in Appendix B, including submission to the GFR of all documents required by REA.

(2) The documents required and the procedure to be used for equipment purchased and/or installations made using the method of minor construction are set forth in subpart G.

(g) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.30-1765.35 [Reserved]

Subpart D—Outside Plant: Major Construction by Contract

§ 1765.36 General.

(a) This subpart implements and explains the provisions of the loan documents setting forth the requirements and procedures to be followed by borrowers when outside plant major construction by contract is financed by loan funds. Terms used in this subpart are defined in § 1765.2 and REA Contract Form 515.

(b) The contract method for major construction is described in § 1765.5(b).

§ 1765.37 Plans and specifications (P&S).

(a) *General.* (1) Prior to the preparation of P&S for the construction project:

(i) A review shall be made of the outside plant requirements, and the Loan Design (LD) shall be revised to reflect any needed changes (See § 1765.3).

(ii) Deviations from the approved LD (7 CFR 1749) must be approved by REA (See § 1765.3).

(2) The standard REA specifications required for construction of outside plant facilities are:

(i) REA Form 515a (Bulletin 345-150)—Specifications and Drawings for Construction of Direct Buried Plant.

(ii) REA Form 515c (Bulletin 345-151)—Specifications and Drawings for Conduit and Manhole Construction.

(iii) REA Form 515d (Bulletin 345-152)—Specifications and Drawings for Underground Cable Installation.

(iv) REA Form 515f (Bulletin 345-153)—Specifications and Drawings for Construction of Pole Lines and Aerial Cables.

(v) REA Form 515g (Bulletin 345-154)—Specifications and Drawings for Service Entrance and Station Protector Installation.

(b) *Preparation of plans and specifications.* Each set of plans and specifications shall include:

(1) REA Contract Form 515, "Telephone System Construction Contract (Labor and Materials)."

(2) The specifications described in (a)(2) above as specified by the borrower in the REA Contract Form 515.

(3) Description of special assembly units and guide drawings, if any.

(4) Key, detail, and cable layout maps.

(5) REA Contract Form 787,

"Supplement A to Construction Contract, REA Contract Form 515," when the borrower proposes to provide any materials to the contractor. The borrower shall not order materials for a contractor without REA approval. In

such cases the borrower must attach Form 787 and a "List of Owner's Materials on Hand" and/or a "List of Materials Ordered by Owner but Not Delivered" to contract Form 515 [See § 1765.38(f)]. Any materials furnished under Supplement A shall be listed in REA Bulletin 344-1 unless special REA approval has been received by the borrower to use unlisted materials.

(c) *Submission of plans and specifications to REA.* (1) Two sets of the plans and specifications and one copy of the "Check List for Review of Plans and Specifications," REA Form 553, OMB No. 0572-0062, signed by the borrower's engineer, shall be furnished to the GFR.

(2) If REA approves the P&S, REA will return one set to the borrower.

§ 1765.38 Procurement procedures.

(a) *Sealed competitive bidding—(1) Qualifying bidders.* (i) The borrower is responsible for selecting qualified contractors to bid on the project. See § 1765.8(a)(3). Questions relating to bidders' qualifications shall be resolved prior to the pre-bid conference.

(ii) REA Form 274 or its equivalent, supplemented by REA Form 276, shall be used for the submission of bidders' qualifications for all types of construction and for the required information on the bidder and subcontractors.

(2) *Invitations to bid—*The borrower shall solicit bids as set forth in § 1765.8(a)(2). Invitations shall be sent to at least 6 prospective bidders.

(3) *Pre-bid conference.* (i) Representatives of the borrower and its engineer shall be present at the pre-bid conference at the time and place designated in the Notice to Bidders. The borrower shall invite the GFR to attend the pre-bid conference.

(ii) The purpose of the pre-bid conference is to acquaint the bidders with the scope and special considerations of the project and to clarify any concerns the bidders may have.

(iii) No proposals shall be considered from bidders that do not attend the pre-bid conference unless the bidder has been notified by the engineer that such bidder's attendance has been waived. Attendance can be waived if, in the judgment of the engineer, the bidder would gain no additional understanding of the construction project by attending the pre-bid conference.

(iv) The borrower shall obtain from the engineer the minutes of the pre-bid conference and shall distribute them to all potential bidders.

(v) When fewer than three bidders have been qualified to submit bids, REA written approval must be obtained to proceed with requesting bids.

(4) *Bid openings.* (i) Bid openings and award of contract shall be conducted in accordance with § 1765.8(a).

(ii) Two copies of the assembly unit sections of the apparent lowest responsive bid accepted by the borrower shall be sent to REA.

(b) *Negotiated bidding.* (1) Competitive bids are not required for outside plant construction that is estimated to cost less than \$200,000 labor and materials. The borrower shall obtain REA approval of the plans and specifications before it selects the contractor for negotiated bidding.

(2) The procedures to be followed are contained in § 1765.8(b) and paragraphs (3) and (4) of this section.

(3) *Negotiation conference.* (i) The borrower shall schedule a conference to be attended by representatives of the engineer, the borrower and the contractor selected for negotiations. The borrower shall invite the GFR to attend this conference.

(ii) The purpose of the negotiation conference is to acquaint the contractor with the scope and special considerations of the project and to answer any questions.

(iii) The borrower shall obtain from the engineer notes covering the negotiation conference and shall distribute them to all attendees.

(4) Two copies of the assembly unit sections of the negotiated contractor's proposal shall be sent to the GFR for approval.

(c) *Contract amendments.* The borrower shall prepare contract amendments in accordance with § 1765.11 on REA Contract Form 526, Construction Contract Amendment.

(d) *Subcontracts.* The REA requirements for subcontracts and the procedures to be followed are set forth in § 1765.9.

(e) *Preconstruction conference.* The borrower shall conduct a conference, attended by the borrower, contractor, subcontractors, resident engineer, and the GFR, prior to the beginning of cable placement, to resolve any questions pertaining to the construction. Results of the conference shall be provided to each conference participant (See § 1765.10).

(f) *Owner-furnished materials.* When the borrower furnishes materials under REA Contract Form 787, Supplement A to Construction Contract, these steps shall be followed:

(1) Materials on hand to be furnished by the borrower shall be released to the contractor at the start of construction. Materials on order but not received

shall be provided to the contractor as they become available. The borrower shall obtain from the contractor a written receipt for all such materials delivered.

(2) Materials on hand, until released to the contractor, shall be covered by fire and either wind-storm or extended coverage insurance, exclusive of materials stored in the open and not within 100 feet of any building. Poles, wherever stored, shall be covered by fire insurance. All insured values must be at least 80 percent of the cash value of the property insured.

(3) Subject to adjustment at the time of final settlement, the borrower shall obtain from the contractor monthly invoices that show credit to the borrower, at the prices quoted in Form 787, Supplement A, for all materials furnished by the borrower and installed by the contractor during the preceding month.

(4) Any materials furnished by the borrower remaining as surplus at the completion of construction shall be returned to the borrower. For such materials, the borrower shall furnish a written receipt to the contractor and credit the contractor at the prices quoted in Supplement A.

(g) *Changes or corrections in construction.* (1) When changes or corrections in construction are necessary, and the cost of such changes or corrections is properly chargeable to the borrower, the borrower shall have its engineer prepare and sign four copies of a Construction Change Order, REA Form 216, obtain borrower's approval and forward the four copies to the contractor. Receipt of the executed Construction Change Order by the contractor will constitute authorization to proceed with the changes or corrections.

(2) When the changes or corrections have been made, the borrower shall have the contractor complete the form, itemizing the costs in accordance with the terms of the contract, and return three copies to the borrower's engineer. A copy of each change order shall be attached to each copy of the construction inventory required to close out the contract.

§ 1765.39 Closeout documents.

(a) *General.* The borrower shall be responsible for preparing the closeout documents with, if necessary, the assistance of the GFR.

(b) *Documents required.* Appendix C lists the documents required to closeout the Form 515 construction contract.

(c) *Closeout procedure:* (1) After construction has been completed in accordance with the plans and

specifications, and acceptance tests have been made, the borrower shall arrange the time for a final inspection to be made by the borrower's engineer, the contractor, the GFR and a representative of the borrower.

(2) After inspection, the borrower shall prepare and distribute the final inventory documents as indicated on Appendices C and D. The documents listed for REA shall be submitted to the GFR. The approved final inventory is considered the final contract amendment. An extension to the contractor's bond is required when the total inventory price exceeds the maximum contract by more than 20 percent.

(3) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.40-1765.45 [Reserved]

Subpart E—Outside Plant Major Construction by Force Account

§§ 1765.46-1765.55 [Reserved]

Subpart F—Purchase and Installation of Special Equipment.

§ 1765.56 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1765.02 and REA Contract Forms 397 and 398.

(c) Special equipment purchased with loan funds must be included in the List of Materials Acceptable for Use on Telephone Systems of REA Borrowers (See Bulletin 344-2) and meet REA's standards and specifications (See 7 CFR part 1772) unless otherwise approved by REA.

(d) Borrowers must obtain REA review and approval of the LD for their telephone systems Applications of special equipment not included in an approved LD must be submitted to the GFR for REA review and approval. See § 1765.3.

(e) REA Form 397 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish and install basis.

(f) REA Form 398 and applicable specifications shall be used for the purchase of equipment for major construction on a furnish only basis. The procedures provided in subpart G, if applicable, or a FAP approved by REA

may be used for the installation of special equipment purchased with a Form 398 contract.

(g) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures contained in subpart G or the purchase procedures contained in this subpart F.

(h) Some types of special equipment contain software. See subpart C for REA software licensing requirements.

§ 1765.57 Contracts and specifications.

(a) Special Equipment Contract, REA Form 397 shall be used to purchase equipment on a furnish and install basis.

(b) Special Equipment Contract, REA Form 398 shall be used to purchase equipment on a furnish only basis.

(c) The equipment specifications must accompany the selected contract form.

(1) Each specification consists of performance specifications, installation requirements (if applicable) and application engineering requirements.

(2) REA specifications for the Special Equipment Contract are listed in 7 CFR part 1772.

§ 1765.58 Purchasing special equipment.

(a) *General.* (1) Equipment purchases are categorized as initial equipment purchase, equipment additions to existing systems and new system additions.

(i) An initial equipment purchase is a first time purchase by a borrower of a complete system of special equipment.

(ii) Equipment additions to existing systems are additions of components to complete operating systems to increase system capacity that require components made by the manufacturer of the existing system.

(iii) New system additions are purchases of complete systems of special equipment when the purpose can be accomplished either with equipment of the same type and manufacture as other complete operating systems in the borrower's system, or with complete systems of special equipment from other manufacturers.

(iv) Where equipment is obtained under a Form 398 Contract, the borrower shall require the supplier to provide a detailed proposed bonding and grounding plan and detailed installation information. The installation information is to enable acceptance testing by the borrower upon completion of the installation.

(2) For initial equipment purchases that qualify as major construction, the borrower shall obtain proposals from at least three suppliers of equipment of different manufacturers.

(3) For equipment additions to increase the capacity of existing systems, the borrower may negotiate for equipment of a specific type and manufacture. REA approval to negotiate in this instance is not required if these additions were specifically described in the LD approved by REA.

(4) For new system additions, the borrower may request REA approval to negotiate for additional equipment for the purpose of standardization on a system basis, provided REA approved the procurement method used for the initial equipment purchase. REA approval to negotiate must be obtained before release of the P&S to the seller.

(5) REA will not approve negotiation with a seller of non-domestic equipment for the purpose of standardization, because such a purchase does not meet the "Buy American" provision.

(6) REA recommends, but does not require, that borrowers include installation by the seller for initial installations of special equipment that qualify as major construction.

(7) Special equipment may be installed by the borrower if it has qualified personnel and test equipment available to install the equipment and make the required acceptance tests, and written approval is given by REA.

(8) Installations, whether by the borrower or the seller, must meet the installation requirements of Form 397 specifications. A copy of the acceptance tests results must be attached to the closeout documents or work order summary.

(9) Detailed considerations and guidelines for the preparation of the specifications for the various applications of special equipment can be found in REA Telecommunications Engineering and Construction Manuals.

(10) The borrower must obtain authorization from the Federal Communications Commission (FCC) to construct and operate radio transmitting equipment. Evidence of FCC authorization is required for REA contract approval. Where required, the borrower must obtain approval of state regulatory bodies regarding tariffs and related matters.

(b) *Procurement procedures—(1) General.* The following are the procurement procedure steps required for the purchase of special equipment by borrowers.

(2) *Initial equipment purchase.* (i) The borrower prepares the P&S and sends two copies to the GFR for approval.

(ii) REA approves the P&S in writing (or notifies the borrower of any reason for withholding approval).

(iii) The borrower obtains proposals from three or more sellers.

(iv) The borrower selects the proposal to be accepted and sends notification of this selection supported by a summary of all proposals and an engineer's recommendation to REA for approval.

(v) REA approves the proposal selection in writing (or notifies the borrower of any reason for withholding approval).

(vi) The borrower sends three executed contracts including specifications to REA for approval.

(vii) After REA approval of the contract, one copy will be returned to the borrower and one copy will be sent to the seller.

(3) *Equipment additions to existing systems.* Purchase procedures for equipment additions to existing systems are the same as for initial system purchase except that the borrower may negotiate for equipment of a specific type and manufacture instead of obtaining proposals from three or more sellers.

(4) *New system additions.* (i) The borrower prepares the P&S and sends two copies to the GFR for approval. The borrower may request REA approval to negotiate for the purpose of standardization on a system basis.

(ii) REA notifies the borrower in writing of REA's decision as to whether to approve the P&S and whether to allow the borrower to negotiate for specific equipment.

(iii) The remainder of the purchase procedure for new system additions is the same as for initial equipment purchase.

(c) *Contract amendments.* (1) The general requirements for contract amendments are set forth in § 1765.11.

(2) The borrower shall prepare any required amendments to special equipment contracts, arrange for the execution by all parties, and submit these amendments to REA, so that any changes in the contract will have been submitted by the time closeout documents are submitted. REA Form 238, Construction or Equipment Contract Amendment shall be used for this purpose.

(d) *Closeout procedures—(1) Acceptance tests for Form 397.* (i) Immediately upon completion of the installation and alignment of the equipment, the borrower shall arrange with the contractor's installer and the GFR for acceptance tests.

(ii) The borrower shall obtain from the contractor, in writing, the results of all inspections and tests made by the contractor as required in the specifications. The borrower will analyze the test results and determine whether the performance of the

equipment meets the contract specifications.

(2) *Acceptance tests for Form 398.* (i) Upon completion of the installation and alignment of the equipment (under this contract the installation alignment will be by other than the seller) the borrower shall perform all the inspections and tests outlined in the specifications.

(3) *Closeout documents.* (i) When the acceptance tests have been completed and all deficiencies have been corrected, the borrower shall:

(A) Assemble the documents listed in

appendix F that are required for the closeout of the special equipment contract.

(B) Notify the GFR that the installation is ready for final acceptance.

(C) Make available for the GFR the documents listed in Appendix F.

(ii) The GFR reviews the final documents and distributes all the documents as indicated in Appendix F.

(iii) Final payment shall not be made

until REA has approved the closeout documents.

§§ 1765.59-1765.65 [Reserved]

Subpart G—Methods of Minor Construction

§§ 1765.66-1765.80 [Reserved]

Subpart H—Construction Certification Program

§§ 1765.81-1765.99 [Reserved]

APPENDIX A—DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

Form Fur- nished by REA	Description	Use with		Prepared by			Number of copies	Distribution			
		Contract	Force account	Contractor	Architect	Borrower		Borrower	REA	Architect	Contractor
238	Construction or Equipment Contract Amendment (Submit to REA for approval, as required).	x			x		3		3		
181	Certificate of Completion (Contract Construction) ¹ .	x			x		3	1	1		1
181a	Certificate of Completion (Force Account Construction).		x		x		2	1	1		
231	Certificate of Contractor.	x		x			2	1	1		
224	Waiver and Release of Lien (2 copies from each supplier).	x		x			2	1	1		
213	Certificate (Buy American).	x		x			1	1			
284	Statement of Architect's Fee.	x	x		x		3	1	1	1	
	Inventory—List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Furnished. Show Cost (See Form 284).	x	x			x	3	1	1	1	
	Inventory—List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Not Performed Show Cost.	x	x			x	3	1	1	1	
(²)	"AsBuilt" Plans and Specifications.	x	x		x		2	1	1		
	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, et cetera.	x		x			1	1			

¹ Cost of Materials and Services Furnished by Borrower not to be included in Total Cost on Form 181.

² When only Minor Changes Were Made During Construction, Two Copies of a Statement to that Effect from the Architect Will be Accepted in Lieu of the "As-Built" Plans and Specifications.

APPENDIX B—DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

Form Fur- nished by REA	Description	Use With		Prepared by		Total Number of Copies	Distribution		
		REA Form 525	REA Form 545	Contractor	Engineer		Borrower	Contractor	REA
238	Construction or Equipment Contract Amendment (Submit to REA for approval, if required, before following documents).	x	x		x	3			3
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (If submitted, Form 744 is not required).	x		x	x	4	2	1	1
517	Results of Acceptance Tests (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	x			x	2	1	1	
752a	Certificate of Completion—Not Including Installation.		x		x	3	1	1	1
744	Certificate of Contractor and Indemnity Agreement (Where contractor is manufacturer, this form may be submitted in lieu of REA Forms 224 and 231).	x		x		2	1		1
224	Waiver and Release of Lien (Two copies from each supplier).	x		x		2	1		1
231	Certificate of Contractor.	x		x		2	1		1
213	Certificate (Buy American).	x	x	x		2	1		1
	Switching Diagram, as installed.	x	x	x		3	2		1

APPENDIX B—DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT—Continued

Form Furnished by REA	Description	Use With		Prepared by		Total Number of Copies	Distribution		
		REA Form 525	REA Form 545	Contractor	Engineer		Borrower	Contractor	REA
	Set of Drawings (Each set to include all the drawings required under the Specification REA Form 522).	x	x	x		3	3		

APPENDIX C—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515

REA Form Number	Description	Number of Copies	Form Available From REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
724	Final Inventory	4	x	x		1	1	12
724a	Final Inventory	4	x	x		1	1	12
	Contractor's Bond Extension (When required)	3			x	1	1	1
281	Tabulation of Materials Furnished by Borrower	4		x		1	1	12
213	Certificate ("Buy American")	1	x		x	1		
	Listing of Construction Change Orders	2		x				12
224	Waiver and Release of Lien (Two copies from each supplier)	2	x		x	1		1
231	Certificate of Contractor	2	x		x	1		1
527	Final Statement of Construction	4	x	x		1	1	2
	Reports on Results of Acceptance Tests	2		x		1	1	
	Set of Final Staking Sheets	1		x		1		
	Tabulation of Staking Sheets	1		x		1		
	Correction Summary (legible copy)	1		x		1		
	Treated Forest Products Inspection Reports or Certificates of Compliance (Prepared by inspection company or supplier)	1				1		
	Final Key Map (when applicable)	3		x		2		1
	Final Central Office Area and Town Detail Maps	3		x		2		1

¹ After approval of inventory by REA, one will be returned to borrower.

APPENDIX D—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT LABOR AND MATERIALS, REA FORM 515

Sequence		By	Procedure
Step No.	When		
1.	Prior to completion of construction	Borrower's Engineer	Receives instructions from the GFR concerning the closeout procedure.
2.	Upon completion construction	Borrower's Engineer	Prepares the following: 3 sets of Key Maps, when applicable, 1 of which shows work done under the construction contract marked with red pencil. 3 sets of Detail Maps, 1 of which shows work done under the construction contract marked with red pencil. 1 copy of Tabulation of Staking Sheets. 1 copy of tentative Final Inventory, REA Forms 724, 724a.
3.	After construction has been completed and acceptance tests made	Borrower's Engineer	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection.
4.	Upon receipt of letter from borrower's engineer	GFR	Promptly arranges with borrower, borrower's engineer, and contractor for final inspection of construction. It is contemplated that final inspections will be made on sections of line as construction is completed, leaving a minimum amount to be inspected at this time.
5.	When requested by the GFR	REA Field Accountant	Audits REA Form 281, if borrower supplied part of the materials.
6.	Inspection date scheduled	Borrower's Engineer	Shall have the following documents available for the GFR: 1 set of "as constructed" Key Maps (when applicable). 1 set of "as constructed" Detail Maps. 1 copy of the List of Construction Change Orders. 1 set of Final Staking Sheets. 1 copy of Tabulation Staking Sheets. 1 copy of Treated Forest Products Inspection Reports or Certificates of Compliance. 1 copy of tentative Final Inventory REA Forms 724, 724a. 1 copy of tentative Tabulation, REA Form 231, if borrower furnished part of material.
7.	During inspection	Borrower's Engineer	1 copy of Report on Results of Acceptance Tests. Issues instructions to contractor covering corrections in construction found during inspection by GFR in the company of the borrower's engineer and the contractor or his/her representative.
8.	During inspection	Contractor	Corrects defects in construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
9.	During inspection	Borrower's Engineer	With GFR inspects and approves corrected construction.

APPENDIX D—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT LABOR AND MATERIALS, REA FORM 515—Continued

Step No.	Sequence		By	Procedure
	When			
10.	During inspection.....		Borrower's Engineer.....	Marks inspected areas on the Key Map, if available, otherwise on the Detail Maps.
11.	Upon completion of inspection.....		Borrower's Engineer.....	Prepares or obtains all the closeout documents listed in Appendix C. Makes distribution of the copies of the documents as indicated in Appendix C.
12.	After reviewing final documents.....		REA GFR.....	Forwards the documents for REA to the GFR.
13.	After signing final inventory.....		Borrower.....	Reviews documents and distributes copies as indicated in Appendix C. Prepares and submits Financial Requirement Statement, REA Form 481, requesting amount necessary to make final payment due under contract.
14.	On receipt of final advance.....		Borrower.....	Promptly forwards check for final payment to contractor.
15.	During next loan fund audit review after final payment to contractor.		REA Field accountant.....	Makes an examination of borrowers construction records for (1) compliance with the construction contract and Subpart D and (2) REA Form 281, Tabulation of Materials Furnished by Borrowers, if any, for appropriate costs.

Part 1765—Appendix E [Reserved]

APPENDIX F—DOCUMENTS REQUIRED TO CLOSEOUT SPECIAL EQUIPMENT CONTRACTS

Form furnished by REA	Description	No. of Copies		Prepared By				Distribution		
		Form 397	Form 398	Form 397		Form 398		Borrower	Contractor	REA
				Contractor	Engineer	Contractor	Engineer			
238	Construction or Equipment Contract Amendment (If required, submit to REA for approval before other closeout documents.).	3	3		x		x			3
396	Certificate of Completion—Special Equipment Contract (Including Installation).	3			x		x	1	1	1
396a	Certificate of Completion—Special Equipment Contract (Not Including Installation).		3	x			x	1	1	1
744	Certificate of Contractor and Indemnity Agreement.	2		x				1		1
213	Certificate (Buy American).....	1	1	x		x		1		
	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	2	2	x			x	1		1
	Set of maintenance recommendations for all equipment furnished under the contract.	1	1	x		x		1		

Dated: August 11, 1989.

Blaine D. Stockton, Jr.,

Administrator.

[FR Doc. 89-22282 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF AGRICULTURE**Rural Electrification Administration****7 CFR Part 1765**

RIN 0572-AA31

Telephone Materials, Equipment, and Construction—Telephone Program**AGENCY:** Rural Electrification Administration, USDA.**ACTION:** Proposed rule.

SUMMARY: The Rural Electrification Administration proposes to add subpart E—Outside Plant Major Construction by Force Account, subpart G—Minor Construction, and subpart H—Construction of Certification Program to 7 CFR chapter XVII, part 1765, Telephone Materials, Equipment, and Construction—Telephone Program. These new subparts consolidate, revise, and clarify policies, requirements, and procedures presently contained in various REA publications.

Part 1765 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds. The primary objectives of these new subparts are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the burden on borrowers involved in planning and construction of telecommunication facilities; and to decrease the processing time of related documents by REA.

All borrowers that are parties to the planning and construction of borrowers' telecommunication facilities and systems will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than November 24, 1989.

ADDRESS: Comments may be mailed to William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835 South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments received may be inspected in Room 2835 between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835 South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-8663.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

The reporting and recordkeeping provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*) contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 0572-0062.

Public reporting burden for this collection of information is estimated to average 0.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB 0572-0062), Washington, DC 20503.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background:

Currently, the policies and requirements for construction of major outside plant facilities by the force account method, construction by work order and administration of construction certification programs by REA telephone borrowers with REA loan funds are contained in numerous REA publications including the following existing REA Bulletins:

- 320-23 Construction Certification Procedures for Designated Telephone Borrowers.
- 381-7 Methods of Construction of Telephone Borrowers' Initial System Outside Plant Facilities.
- 382-1 Force Account Construction, Telephone Borrowers' Initial Systems.
- 382-2 Construction of Telephone System Improvements and Extensions by Work Order or Contract.
- 382-3 Final Inventory Documents, Force Account Construction, Telephone Borrowers' Initial System.

Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the *Federal Register*.

The Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR parts. When that is accomplished, these Bulletins will be rescinded.

Presently construction is classified as "initial system" or "improvements and extensions." These classifications have not been well defined and cause controversy as to the method of construction to be used. The proposed rule classifies construction as "major" or "minor" depending on the estimated cost of the construction project, major being over \$100,000 and minor being \$100,000 or less, labor and materials.

The policies, requirements, and procedures for outside plant major construction by the force account method (borrower providing all labor and materials) are set forth in proposed subpart E. Outside Plant Major Construction by Force Account. The basic policies are (1) REA approval is required to use the force account method of construction, (2) REA will not approve the force account method for first time borrowers, except in very unusual cases. (3) Force Account Proposals (FAP) are subject to REA review and approval and (4) REA will provide loan funds only up to the amount determined by the completed assembly units priced at the unit costs in the approved FAP. The subpart also sets forth the requirements for the request to use the force account method,

the qualifications the construction supervisor must meet and the procedures to be followed for the construction and closeout of the FAP.

The policies, requirements and procedures for minor construction are set forth in proposed Subpart G, Minor Construction. The basic policies are (1) minor construction may be performed by contract or by work order (borrower providing all labor and materials), (2) minor construction activities will be administered under the borrower's regular work order procedure, (3) the completed construction shall be inspected and certified by an experienced licensed telephone engineer or the borrower's staff engineer approved by REA as the "employee in charge" of force account engineering for all borrowers with 2,000 or more subscribers, and (4) REA will fund minor construction work projects only within one year of the construction completion date.

The policies, requirements and procedures for the construction certification program are set forth in proposed Subpart H, Construction Certification Program. The basic policies are (1) certain borrowers will be nominated by REA during the loan processing period to participate in the construction certification program, (2) borrowers who accept will fulfill the responsibilities for administration and construction of projects financed by REA loans or loan guarantees, such as, approval of engineering and architectural contracts, approval of P&S (plans and specifications), approval of price quotations and bids, approval of construction contracts and amendments, approval of FAP's (following REA approval of the force account method), inspection and certification of construction, approval of closeout documents and other responsibilities as may be specifically granted in writing by REA, and (3) REA will retain all other responsibilities; such as, approval to deviate from REA requirements, except as provided in (2) above, approval of construction projects or amounts not included in the loan, approval of force account methods of engineering and construction, approval to make significant deviations from an approved work plan, approval of interim construction, approval to use materials not listed in the List of Materials Acceptable for Use on Telephone Systems of REA Borrowers, approval of field trials, approval to modify or alter standard forms and contracts, approval to open bids when fewer than the required number have been received, approval of outside plant layouts. "Buy

American" determinations and other responsibilities not specifically transferred in writing by REA. Borrowers accepting the construction certification program must appoint (1) a "Certifying Officer" to execute binding agreements, (2) a "Construction Certifier" to certify that the construction complies with all technical and code requirements, and (3) a "Certification Coordinator" to administer the certification program and serve as the official point of contact for REA. The construction certifier must be an experienced licensed telephone engineer or the borrower's staff engineer approved by REA as the "employee in charge" of force account engineering. The certifying officer or construction certifier may also serve as the certification coordinator.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

These subparts supersede any sections of REA Bulletins with which they are in conflict.

List of Subjects in 7 CFR Part 1765

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR chapter XVII as follows:

1. The authority citation for part 1765 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. Subparts E, G, and H, and Appendix E are added to Part 1765 to read as follows:

* * * * *

Subpart E—Outside Plant Major Construction by Force Account

Sec.

1765.46 General.
1765.47 Procedures.
1765.48 Closeout documents.
1765.49–1765.55 [Reserved].

* * * * *

Subpart G—Minor Construction

1765.66 General.
1765.67 Methods of minor construction.
1765.68 Construction by contract.
1765.69 Construction by force account.
1765.70 Minor construction procedure.
1765.71 Inspection and certification.
1765.72 Minor construction closeout.
1765.73–1765.80 [Reserved].

Subpart H—Construction Certification Program

1765.81 General.
1765.82 Policies and requirements.
1765.83 Responsibilities.
1765.84 Procedures.
1765.85 Advance of loan funds.

1765.86 Certification addendum.
1765.87–1765.99 [Reserved].

* * * * *

Appendix E—Documents Required to Close Out Force Account Outside Plant Construction

* * * * *

Subpart E—Outside Plant Major Construction by Force Account

§ 1765.46 General.

(a) This subpart implements and explains the provisions of the loan documents setting forth the requirements and the procedures to be followed by borrowers for outside plant major construction by the force account method with REA loan funds. Terms used in this subpart are defined in § 1765.2 and REA Contract Form 515.

(b) A borrower shall not use the force account method for construction financed with loan funds unless prior REA approval has been obtained.

(c) Generally, REA will not approve the force account method for major outside plant construction for the initial loan to a borrower.

(d) The Force Account Proposals (FAPs) are subject to review and approval by REA.

(e) The FAP is approved by REA on the basis of estimated labor and material costs. The FAP is closed based on the borrower's actual cost of performing the construction. REA will provide loan funds only up to the amount determined by the completed assembly units priced at the unit prices in the approved FAP.

(Approved by the Office of Management and Budget under control number 0572-0062)

§ 1765.47 Procedures.

(a) *The request.* (1) The borrower shall submit to REA a certified copy of the board resolution or a letter signed by an authorized corporate official requesting approval to use the force account method of construction. The request shall state the advantages of the force account method of construction and provide the following information:

(i) The scope of the construction to be undertaken, stating briefly the facilities and equipment to be installed and other pertinent data.

(ii) The name and qualifications of the construction supervisor who will be directly in charge of construction, the names and qualifications of the construction foremen, and the availability of qualified construction personnel. The construction supervisor must have at least 5 years outside plant

construction experience with at least 2 years at the supervisory level on REA financed projects. Construction foremen must have at least 3 years of outside plant construction experience.

(iii) The availability of equipment for construction, exclusive of equipment needed for normal operation and maintenance.

(b) *Force account proposal (FAP)*: Upon receiving REA approval to use the force account method, the borrower, prior to any construction activity or the purchase of materials or equipment, shall submit to REA two copies of its FAP. The FAP shall consist of:

(1) The REA Contract Form 515 and appropriate supporting attachments that normally would be provided as plans and specifications for contract construction. See § 1765.37

(2) The cost estimate, using Form 515 as a convenient means of showing the following:

(i) The quantity and cost estimates of the various assembly units required. "Labor and other" cost will not include the cost of engineering, legal, and other professional services, interest during construction, preliminary survey and investigation charges, and right-of-way easement procurement costs.

(ii) A list identifying materials or construction for which loan funds will not be requested.

(3) The estimated completion time.

(c) *Storage of Materials*: All materials ordered for the construction shall be stored separate from normal maintenance materials.

(d) *Construction*—(1) *Preconstruction conference*. The borrower shall arrange a conference, attended by the manager, construction supervisor, construction foremen, resident engineer and the GFR prior to the beginning of construction to clarify any questions pertaining to the construction. Notes of the conference shall be provided to each conference participant.

(2) *Construction schedule and progress reports*. The borrower shall obtain from the engineer a construction schedule and submit one copy to the GFR. The schedule shall include the starting date and a statement indicating that materials are either delivered or deliveries are assured to permit construction to proceed in accordance with the construction schedule. The borrower shall obtain from the engineer progress reports and submit one copy of each to the GFR. REA Form 521 may be used for the construction schedule and the progress reports.

(3) *Borrower's management responsibilities*. (i) Obtain all right-of-way easements, permits, etc., prior to construction.

(ii) Maintain records on all expenditures for materials, labor, transportation, and other costs of construction, in order that all costs may be fully accounted for upon completion of the construction.

(iii) Ensure that all the required inspections and tests are made.

(4) *Engineer's responsibilities*. (i) Inspect and inventory construction as completed.

(ii) Require timely corrections and cleanup.

(iii) Perform acceptance tests as construction is completed.

(iv) Provide "as built" staking sheets of completed construction when the final inspections are made.

(v) Maintain accurate and current inventories of completed construction.

(5) *Construction supervisor's responsibilities*. (i) Correct construction errors as construction progresses.

(ii) Maintain an accurate inventory of completed construction.

(iii) Perform cleanup as construction is completed.

(iv) Perform all the inspections and acceptance tests a contractor would be required to make under the construction contract.

(v) Promptly perform cleanup required after final inspection.

§ 1765.48—Closeout documents.

(a) *General*. (1) This section outlines the procedure to be followed in the preparation of closeout documents for the FAP.

(2) The period between the completion of construction and submission of the closeout documents to REA should not exceed 60 days.

(b) *Documents*. The documents required to close the FAP are listed in Appendix E. The following is a brief description of the closeout documents:

(1) *Final Inventory and Certificate of Engineer*. REA Forms 817, 817a, and 817b are prepared by the engineer.

(i) Assembly units inventoried on Form 817a shall be grouped according to the applicable plant account classification as specified in 7 CFR part 1770, Revision and Codification of REA's Accounting System Requirements for Telephone Borrowers of the Rural Electrification Administration.

(ii) On Form 817, the engineer provides a comparison between the final inventory total price (based on assembly prices in the approved FAP) and the actual cost of construction (from the borrower's accounting records).

(iii) The actual costs from the borrower's accounting records are not to include costs for (A) engineering, legal and other professional services, (B)

interest during construction and (C) preliminary survey charges.

(2) *Certificate*. "Buy American," REA Form 213.

(3) *Key Map*, prepared by the engineer, is a permanent record of the general location of the lines and facilities of the borrower's system.

(4) *Detail Maps*, prepared by the engineer, show the details of the outside plant of the telephone system, the location of subscribers and other pertinent operating details.

(5) *Staking Sheets*, prepared by the engineer, show by assembly units the outside plant constructed, and serve as the permanent outside plant record.

(6) *Tabulation of Staking Sheets*, prepared by the engineer, is a summary of the assembly units shown on the staking sheets for preparing the final inventory.

(7) *Treated Forest Products Inspection Reports*, prepared by an REA approved inspection company, certify that wood products furnished for construction meet all requirements of the REA specifications.

(c) *Closeout procedures*. (1) The borrower shall notify the GFR when the project is ready for final inspection.

(2) The GFR shall make the final inspection accompanied by the engineer and the borrower.

(3) The borrower shall correct all deficiencies found during the final inspection.

(4) The borrower may request the assistance of an REA field accountant to review the borrower's record of construction expenditures and assist the borrower with any accounting problems in connection with construction expenditures.

(5) After inspection, the final inventory documents shall be assembled and distributed as indicated on Appendix E. The documents listed for REA are to be submitted to the GFR.

(6) Upon approval of the closeout documents, REA will notify the borrower of approval and of any adjustments to be made in funds advanced in connection with the construction.

(d) The above are not intended to be a complete description of the requirements of the documents relating to REA's closeout procedure. Refer to the documents for additional requirements.

§§ 1765.49–1765.55 (Reserved)

Subpart G—Minor Construction

§ 1765.66 General.

(a) This subpart implements and explains the provisions of the Loan

Documents (as defined in 7 CFR part 1758) setting forth the requirements and procedures to be followed by borrowers for minor construction of telecommunications facilities using REA loan funds. Terms used in this subpart are defined in § 1765.2.

(Approved by the Office of Management and Budget under control number 0572-0062)

§ 1765.67 Methods of minor construction.

Minor construction may be performed by contract using REA Contract Form 773, "Miscellaneous Construction Work and Maintenance Services", or by work order construction.

§ 1765.68 Construction by contract.

(a) REA Form 773 is used for minor construction by contract. Compensation may be based upon unit prices, hourly rates or another mutually agreeable basis. Each contractor shall have only one contract per project. A single work project may require more than one contractor.

(b) The borrower shall prepare the contract form and attach any diagrams, sketches and tabulations necessary to specify clearly the work to be performed and who shall provide which materials. Neither the selection of the contractor nor the contract requires REA approval.

(c) Borrowers are urged to obtain quotations from several contractors before entering into a contract to be assured of obtaining the lowest cost. The borrower must ensure that the contractor selected meets all Federal and State licensing and bonding requirements, and that the contractor maintains the insurance coverage required by the contract for the duration of the work. (See 7 CFR part 1788)

(d) Upon completion and final inspection of the construction the borrower shall obtain from the Contractor a final invoice and an executed copy of REA Form 743, Certificate of Contractor and Indemnity Agreement.

(e) REA Contract Form 773 may also be used to contract for the maintenance and repair of telephone equipment and facilities. Generally, REA will not finance maintenance and repair contracts.

§ 1765.69 Construction by force account.

The borrower shall require that:

(a) Minor construction by the force account method be supervised by a competent foreman. The work shall be performed in accordance with all regulatory and safety codes.

(b) Daily time and material reports, referenced by the work project number, shall be kept to record labor and

materials used as construction is performed.

(c) The construction foreman shall maintain a tabulation of all construction units installed.

§ 1765.70 Minor construction procedure.

(a) If the borrower performs construction financed with loan funds, the borrower's regular work order procedure shall be used to administer minor construction activities that may be performed entirely by a contractor under Form 773 Contract, by work order, or jointly by work order and one or more contractors under Form 773 contracts. The maximum amount of \$100,000 for a single minor construction project includes all Form 773 contracts and work order charges relating to that project.

(b) REA approval must be obtained in advance for minor construction unless all of the following conditions are met:

(1) REA has approved the engineering design.

(2) All standard REA procedures are followed, including use of new materials listed in the List of Materials for Use on Telephone Systems of REA Borrowers (Bul. 344-2) and the application of REA construction practices. (See § 1765.6)

(3) The Standard Form 773 contract is used without modification.

(c) The borrower shall determine the scope of each proposed construction project and decide how it will be constructed. A work project number shall be assigned to which all charges for that project are referenced.

(d) The borrower shall maintain accounting and plant records sufficient to document the cost and location of all construction and to support loan fund advances and disbursements.

(e) Normally the borrower will finance minor construction with general funds and obtain reimbursement with loan funds when construction is completed and executed Form 771 has been submitted to REA. If a borrower satisfies REA of its inability to finance the construction temporarily with general funds, REA may establish, on a case by case basis, a work order fund for specific construction projects. The work order fund will be closed upon receipt of an FRS and the executed Form 771 for the specific projects for which the work order fund was established.

(f) REA will advance funds to finance minor construction work projects only if all necessary documents, including an FRS and supporting data covering the project, are received within one year of the date construction of the project is completed.

§ 1765.71 Inspection and certification.

(a) Upon completion and prior to closeout, minor construction must be inspected and certified to be in compliance with REA construction standards, to be reasonable in cost, and to meet applicable codes. The certification is made by an experienced telephone engineer who is either licensed in the state where the inspection will be performed, or is a borrower's staff engineer, who meets the requirements of the "employee in charge" of force account engineering as described in 7 CFR part 1763. The GFR will periodically audit the inspection of minor construction to ensure integrity of the procedure. REA borrowers with less than 2000 subscribers may use the above procedure or have construction inspection performed by the GFR.

(b) Engineering services for minor construction may be contracted using REA Form 245, Engineering Service Contract—Special Services. Costs for these services may be included in the costs for construction on the Form 771. (See 7 CFR part 1763)

(c) Upon completion of construction, the borrower shall obtain the engineer's certification on REA Form 771. An official of the borrower, designated by the board of directors, shall also execute the borrower's certification on Form 771.

§ 1765.72 Minor construction closeout.

(a) For minor construction inspected by the borrower's engineer, an original and two copies of Form 771 shall be sent to the GFR. The GFR will initial and return the original and one copy.

(b) When funds are requested for minor construction, the original Form 771 signed or initialed by the GFR, shall be submitted with the FRS. Forms 771 should be submitted only with the FRS which they support. REA does not encumber funds pursuant to Forms 771 unless an advance is made to the borrower. (See 7 CFR part 1754).

§ 1765.73—1765.80 [Reserved]

Subpart H—Construction Certification Program

§ 1765.81 General.

This subpart implements and explains the provisions of the loan documents setting forth the requirements and procedures to be followed by borrowers accepting nomination for the construction certification program. Terms used in this subpart are defined in § 1765.2.

(Approved by the Office of Management and Budget under control number 0572-0062)

§ 1765.82 Policies and requirements.

(a) It is REA policy that, as borrowers gain in experience and maturity, the advice and assistance rendered by REA shall progressively diminish. Prior to approval of a loan, REA may nominate certain borrowers to fulfill the responsibilities for administration and construction of projects financed with REA loans. Borrowers who accept this nomination will be known as "certification borrowers," and the program in which they participate will be known as the "certification program."

(b) Generally, initial loan borrowers are not eligible for the certification program.

(c) Generally, the factors which REA will consider in selecting borrowers for the certification program will include:

(1) The experience of the staff of the borrower.

(2) The REA assessment of the borrower's ability to handle the certification program requirements considering the size and complexity of the proposed construction in the LD.

(3) The history of the borrower in following REA's policies and procedures.

(4) Other factors deemed relevant by REA.

(d) Except as specifically stated in this subpart, certification borrowers must comply with all requirements applicable to other borrowers.

(e) REA reserves the right at any time to require submission of construction documents or to remove the borrower from the certification program.

§ 1765.83 Responsibilities.

(a) Responsibilities transferred to certification borrowers:

(1) Approval of engineering and architectural service contracts.

(2) Approval of P&S.

(3) Approval of price quotations and bids, except where the low price bid is not accepted.

(4) Approval of award of construction contracts and amendments.

(5) Approval of FAP's if REA has approved the force account method of construction for the construction project.

(6) Inspection and certification of construction.

(7) Approval of closeout documents.

(8) Other responsibilities as may be specifically granted in writing by REA.

(b) Responsibilities retained by REA:

(1) Approval to deviate from REA requirements, except as provided in (a) above.

(2) Approval of use of loan funds for projects other than those included in the loan construction budget. See 7 CFR part 1754.

(3) Approval of use of loan funds in excess of amounts included in the loan budget.

(4) Approval of force account methods of engineering and construction.

(5) Approval to make significant deviations from the work plan approved by REA.

(6) Approval of interim construction.

(7) Approval to use materials not listed in the List of Materials Acceptable for Use on Telephone Systems of REA Borrowers.

(8) Approval of field trials.

(9) Approval to modify or alter standard forms and contracts.

(10) Approval to open bids when fewer than the required number have been received.

(11) Approval of outside plant layouts.

(12) "Buy American" determinations.

(13) Other responsibilities not specifically transferred by this subpart or in writing by REA.

§ 1765.84 Procedures.

(a) Certification borrowers shall appoint three certification officials. These appointments shall be subject to REA approval.

(1) The "Certifying Officer" shall be an officer or employee of the borrower who is authorized to execute binding agreements. This officer shall sign all contracts, amendments, closeout documents and the certification on REA Form 158, Certification of Contract or Force Account Proposal Approval, and REA Form 159, Summary of Completed Construction.

(2) The "Construction Certifier" shall be an experienced telephone engineer who is either licensed in the state where the inspection will be performed, or is a borrower's staff engineer who meets the requirements of the "employee in charge" of force account engineering as described in 7 CFR part 1763. REA may determine that it will accept the certification only for matters within the staff engineer's area of specialization. In such cases the position of "Construction Certifier" shall be filled by more than one engineer.

This official is responsible for certifying that the construction complies with all technical and code requirements.

(3) The "Certification Coordinator" shall administer the certification program and serve as the official point of contact for REA. The certifying officer or construction certifier may also serve as the certification coordinator.

(b) Certification borrowers shall submit and obtain REA approval of a work plan before construction and related engineering begin.

(1) The work plan shall provide a description of the proposed construction and methods of purchasing in such detail as to enable REA to monitor the construction program to ensure to its satisfaction that loan purposes are accomplished in an organized construction program.

(2) The work plan shall include the following:

(i) The names and qualifications of the proposed certification officials defined in § 1765.84(a).

(ii) A listing of the proposed work projects to accomplish the loan purposes showing the estimated cost, method of performing the construction, and the proposed commencement and completion dates for each work project. The proposed work projects shall be summarized on REA Form 157, Construction Work Plan and Cost Distribution, or a form providing essentially the same information.

(iii) The proposed source of funds for meeting cost overruns if the total estimated cost of work projects exceeds the loan budget.

(iv) A statement signed by the borrower's certification officials and the GFR that the work plan is accurate and complete.

(c) Under the certification program, the borrower shall follow all standard REA postloan engineering and construction procedures except that the approvals shown in § 1765.83(a) will be made by certification officials rather than REA. The approvals noted in § 1765.83(a) (1), (4) and (5) will be reported immediately to REA using REA Form 158. Approval of closeouts, § 1765.38(a) (6) and (7), will be reported immediately on REA Form 159.

(d) As the construction program progresses, the certification borrower shall request, by letter, REA approval of any significant changes in work plan schedules and budgets and in certification officials.

§ 1765.85 Advance of loan funds.

Advance of loan funds needed to meet the certification borrower's current financial obligations are to be requested on REA Form 481 for construction and engineering items supported by appropriate REA Forms 158 and 159. For items other than construction or engineering, other supporting data shall be submitted. (See 7 CFR part 1754)

§ 1765.86 Certification addendum.

The certification borrower shall modify standard REA forms of contract for use under the certification program by inserting an executed copy of the

following certification addendum in each copy of the contract.

Certification Addendum

Permission has been obtained by the Owner to proceed with this contract under 7 CFR part 1765 subpart H, pursuant to which the references in the REA construction document requiring approvals and other actions of the REA Administrator will not apply unless REA

gives specific notice in writing to the affected parties that designated approval(s) or action(s) will be required. Certifications by the Contractor of amounts due and certifications of completions of work under the contract are to be construed to be rendered for the purpose of inducing the Rural Electrification Administration or Rural Telephone Bank to advance funds to the Owner to make, or reimburse the Owner for, payments under this contract.

Date _____
 Owner _____
 By _____
 Certifying Officer _____
 Date _____
 Contractor _____
 By _____
 Title _____

§§ 1765.87—1765.99 [Reserved]

Appendix E—Documents Required To Close Out Force Account Outside Plant Construction

Item No.	REA form No.	Description on title of document	Number of copies required and distribution of documents		
			Total No.	Owner	REA
a.	817, 817a, and 817b	Final inventory force account construction and certificate of engineer	3	1	2 (1)
b.	213	Certificate, "Buy American" (if applicable)	2 (2)	1	1
c.	-	Detail Maps	2	1	1
d.	-	Key Map if applicable	2	1	1
e.	-	Staking Sheets	1	1	0
f.	-	Tabulation of Staking Sheets	1	1	0
g.	-	Treated Forest Products Inspection Reports, if applicable	1	1	0

(1)—One copy is returned to borrower by REA.
 (2)—Two copies from each supplier.

Dated: August 14, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-22283 Filed 9-22-89; 8:45 am]

BILLING CODE 3410-15-M

Federal Register

**Monday
September 25, 1989**

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11, et al.

**Organizational Changes and Delegations
of Authority; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 13, 15, 21, 43, 45, 61, 63, 65, 67, 73, 77, 91, 93, 109, 121, 125, 127, 129, 133, 135, 137, 139, 141, 145, 150, 153, 169, 171, 183, 185, 189, 191, and 199

[Docket No. 26020; Amdt. Nos. 11-32, 13-19, 15-1, 21-67, 43-32, 45-19, 61-85, 63-28, 65-35, 67-13, 73-5, 77-11, 91-212, 93-58, 109-1, 121-207, 125-13, 127-44, 129-19, 133-11, 135-33, 137-13, 139-16, 141-3, 145-22, 150-2, 153-6, 169-2, 171-15, 183-8, 185-1, 189-2, 191-2, 199-2; SFAR 27-6; SFAR 36-5; SFAR 44-8]

RIN 2120-AD24

Organizational Changes and Delegations of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts changes to office titles and certain terminology in the regulations that were affected by a recent agencywide reorganization. These changes are being made to reflect delegations of authority that were changed, as well as offices that were renamed or abolished and replaced with new office designations. These changes are necessary to make the regulations consistent with the current agency structure.

EFFECTIVE DATE: October 25, 1989, except the amendments to §§ 91.23, 91.317, and 91.75 which take effect on August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional offices. The most significant change is that certain Regional Divisions and Offices, which formerly reported to the Regional Director, are now under "straight line" authority, meaning that these units within each Regional Office report to the appropriate Associate Administrator (or Chief Counsel) in charge of the function performed by that unit.

Within part 11 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated rulemaking authority by the

Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation regulations references are made to offices that have been renamed or are no longer in existence as a result of reorganization.

Title 14 of the Code of Federal Regulations must therefore be amended to reflect the reorganizations and changes that have taken place.

Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justification for Immediate Adoption

This amendment is needed to avoid possible confusion about the FAA reorganization and to hasten the effective implementation of the reorganization.

In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment is unnecessary.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and because it is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 11

Air carriers, Air taxis, Air traffic control, Air transportation, Aircraft, Airmen, Aviation safety, Safety.

14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

14 CFR Part 15

Administrative claims, Air transportation, Aircraft, Airplanes, Airports, Federal Tort Claims Act, Helicopters, Heliports, Rotorcraft

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 45

Air Safety, Air transportation, Airplanes, Aviation Safety, Helicopters, Nationality, Rotorcraft, Safety Transportation.

14 CFR Part 61

Airmen, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol beverages, Aviation safety, Balloons, Compensation, Drug abuse, Education, Foreign persons, International agreements, Helicopters, Narcotics, Pilots, Rotorcraft, Safety, Students, Teachers, Transportation.

14 CFR Part 63

Air safety, Air transportation, Aircraft, Airmen, Airplanes, Aviation Safety, Drug abuse, Helicopters, Narcotics, Rotorcraft, Safety, Transportation.

14 CFR Part 65

Air safety, Air transportation, Aircraft, Airmen, Aviation safety, Drug abuse, Narcotics, Parachutes, Safety, Transportation.

14 CFR Part 67

Air safety, Air transportation, Airmen, Alcohol and alcoholic beverages, Alcoholism, Aviation safety, Drug abuse, Handicapped, Health records, Medical certification, Medical Records, Medical standards, Narcotics, Safety.

CFR Part 73

Airspace, Airways, Prohibited areas, Restricted areas, Special use airspace.

14 CFR Part 77

Determinations of hazard or no hazard, Obstructions, hazards to air navigation.

14 CFR Part 91

Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airspace, Airports, Airworthiness directives and standards, Alcohol, Aviation safety, Cargo, Liquor, Narcotics, Pilots, Safety, Smoking.

14 CFR Part 93

Special air traffic rules.

14 CFR Part 109

Air safety, Air transportation, Aviation safety, Cargo, Freight forwarders, Safety, Security measures, Shipping.

14 CFR Part 121

Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Aviation safety, Beverages, Cargo, Chemicals, Children, Common Carriers, Drugs, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Liquor, Mail, Narcotics, Pilots, Safety, Smoking, Transportation.

14 CFR Part 125

Air traffic control, Air transportation, Aircraft, Airmen, Airplanes, Airports, Airspace, Airworthiness, Cargo, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Narcotics, Pilots, Smoking.

14 CFR Part 127

Air carrier, Air traffic control, Aircraft, Airmen, Airspace, Airworthiness, Alcohol, Beverages, Cargo, Children, Drugs, Helicopters, Hours of work, Infants, Narcotics, Pilots, Smoking, Weapons.

14 CFR Part 129

Air carrier, Air traffic control, Aircraft, Airports, Airworthiness, Weapons.

14 CFR Part 133

Aircraft, Airworthiness, Drugs, Mail, Narcotics, Pilots.

14 CFR Part 135

Air carriers, Air traffic control, Air taxi, Air transportation, Aircraft, Airmen, Airplanes, Airports, Airspace, Airworthiness, Alcohol, Aviation safety, Baggage, Beverages, Cargo, Chemicals, Drugs, Handicapped, Hazardous materials, Helicopters, Hours of work,

Mail, Narcotics, Pilots, Safety, Smoking, Transportation, Weapons.

14 CFR Part 137

Air traffic control, Aircraft, Airports, Narcotics, Pilots, Rotorcraft.

14 CFR Part 139

Air carriers, Air safety, Air transportation, Aircraft, Airplanes, Airports, Aviation safety, Charter flights, Helicopters, Heliports, Rotorcraft, Safety, Transportation.

14 CFR Part 141

Air safety, Air transportation, Aircraft pilots, Airmen, Airplanes, Aviation safety, Balloons, Business and industry, Education, Educational facilities, Helicopters, Parachutes, Pilots, Rotorcraft, Safety, Schools, Students, Teachers, Transportation.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 150

Airports, Noise control.

14 CFR Part 153

Air safety, Air transportation, Airports, Aviation safety, Heliports, Safety, Transportation.

14 CFR Part 169

Air safety, Air transportation, Airports, Aviation safety, Safety, Transportation.

14 CFR Part 171

Facilities, Non-Federal navigation.

14 CFR Part 183

Air safety, Air transportation, Aircraft, Airmen, Aviation safety, Safety, Transportation.

14 CFR Part 185

Employment.

14 CFR Part 189

Telecommunications.

14 CFR Part 191

Air carriers, Air safety, Air transportation, Airports, Aviation safety, Safety, Security measures.

14 CFR Part 199

Aircraft, Loan Guarantee Program.

The Rule

In consideration of the foregoing the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR chapter I) as follows:

PART 11—GENERAL RULE-MAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 1431(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 10(d)(3) of SFAR No. 27-5 is amended by revising paragraph (iii), by removing paragraphs (ix) and (xi), by redesignating paragraphs (x) and (xii)-(xiv) as paragraphs (ix)-(xii), and by revising newly redesignated paragraphs (ix) through (xii) to read as follows:

Special Federal Aviation Regulation No. 27-5—Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

* * * * *

Sec. 10 Incorporation by reference.

* * * * *

(d) ***

(3) ***

(iii) Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, GA 30349.

* * * * *

(ix) Anchorage Aircraft Certification Field Office, 222 W. 7th Avenue, #14, Anchorage, Alaska 99513.

(x) Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, CA 90806.

(xi) Brussels Aircraft Certification Staff, 15 Rue de la Loi, Room B-1040, Brussels, Belgium.

(xii) FAA Representative, Office of U.S. Consulate General, Avenida Presidente Wilson, 147 Rio de Janeiro, Brazil.

* * * * *

§ 11.11 [Amended]

3. Section 11.11 is amended by changing the words "Regional Director" or "Regional Directors" to "Regional Administrator" or "Regional Administrators" respectively wherever they appear, by changing the words "Regional Counsel" to "Assistant Chief Counsel" wherever they appear, and by adding the words "Unless a request for comment indicates otherwise," before the words "A public docket".

§ 11.15 [Amended]

4. Section 11.15 is amended by changing the words "Area Office, air traffic control facility or office, Air Carrier District Office, General Aviation District Office" to "air traffic control facility or office, Flight Standards District Office, Aircraft Certification Directorate, Aircraft Certification Office" and by changing the words "Director or Acting Director or officer in charge of the Region concerned" to

"Regional Administrator or Acting Regional Administrator or officer in charge of the Region concerned".

§ 11.25 [Amended]

5. Section 11.25(b)(iv) is amended by changing "(AGC-204)" to "(AGC-10)".

§ 11.41 [Amended]

6. Section 11.41(c) is amended by removing the words "Aeronautical Center and the"; by changing the words "National Aviation Facilities Experimental Center" to "Technical Center"; by changing the words "Regional Directors" to "Regional Administrators"; and by changing the words "A Regional Counsel" to "An Assistant Chief Counsel".

§ 11.49 [Amended]

7. Section 11.49 is amended by changing the words "Chief, Aircraft Programs Division, Office of Flight Operations" in paragraph (b)(2) to "Manager, Technical Programs Division, Flight Standards Service" and by changing the words "Director of Airworthiness" in paragraph (b)(3) to "Director, Aircraft Certification Service".

§ 11.61 [Amended]

8. Section 11.61(d) is amended by changing the words "a Regional Counsel" to "an Assistant Chief Counsel for a region" and by changing the words "or Regional Counsel" to "or Assistant Chief Counsel".

9. Sections 11.81 (b), (c), and (d) are revised to read as follows:

§ 11.81 [Amended]

(b) For the purposes of this subpart, "Director" means the Director, Aircraft Certification Service, or a Manager of an Aircraft Certification Directorate (Directorate Manager).

(c) The authority for issuing Airworthiness Directives is limited to the following persons:

(1) The Director, Aircraft Certification Service; and

(2) Managers of the Aircraft Certification Directorates for products under the authority of those directorates, as determined by the Administrator.

(d) For the purposes of this subpart, "Chief Counsel" means the Chief Counsel or an Assistant Chief Counsel for a region or directorate, or the Assistant Chief Counsel for Regulations and Enforcement, or any person to whom the Chief Counsel or Assistant Chief Counsel for a region has delegated his authority in the matter concerned.

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

10. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. 1354 (a) and (c), 1374(d), 1401-1406, 1421-1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484 through 1489 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1475, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act) (Revised, 49 U.S.C. 106(g)); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

§ 13.3 [Amended]

11. Section 13.3 is amended in paragraph (b) by removing the words "(except under Title V of that Act)", inserting the word "and" before "each Assistant Chief Counsel", by removing the words ", and each Regional Counsel", and by removing the last sentence; and in paragraph (c) by removing the words "each Regional Counsel," by inserting the word "and" before "each Assistant Chief Counsel", and by removing the words "and the Aeronautical Center Counsel".

§ 13.5 [Amended]

12. Section 13.5(b) (2) and (k) are amended by changing "(AGC-209)" to "(AGC-10)".

§ 13.17 [Amended]

13. Section 13.17 is amended by changing the words "Regional Director" to "Regional Administrator" wherever they appear and by changing the words "Regional Counsel" to "Assistant Chief Counsel" wherever they appear.

§ 13.19 [Amended]

14. Section 13.19 is amended in paragraph (b) by changing the words "Regional Counsel concerned" to "Assistant Chief Counsel for the region or the Aeronautical Center", and by changing the words "Aeronautical Center Counsel" to "Assistant Chief Counsel for the Aeronautical Center or for the region"; and in paragraph (c) by changing the words "Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act)" to "Assistant Chief Counsel for the region or the Assistant Chief Counsel for the Aeronautical Center".

§ 13.20 [Amended]

15. Section 13.20(l) is amended by removing the words "and each Regional Counsel" and by changing the words "Aeronautical Center Counsel" to "Assistant Chief Counsel for the Aeronautical Center".

§ 13.21 [Amended]

16. Section 13.21 is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel for the region or the Aeronautical Center".

§ 13.23 [Amended]

17. Section 13.23(b) is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel for the region".

§ 13.25 [Amended]

18. Section 13.25 is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel for the region" wherever they appear and by changing the words "Aeronautical Center Counsel" to "Assistant Chief Counsel for the Aeronautical Center".

§ 13.35 [Amended]

19. Section 13.35(a) is amended by changing the words "Room 914E" to "Room 924A".

§ 13.71 [Amended]

20. Section 13.71 is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel for the region".

§ 13.73 [Amended]

21. Section 13.73 is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel for the region".

§ 13.81 [Amended]

22. Section 13.81(a) is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel for the region".

PART 15—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

23. The authority citation for part 15 continues to read as follows:

Authority: 49 U.S.C. 1354; 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 15.3 [Amended]

24. Section 15.3(b) is amended by changing the words "Regional Counsel" to "Assistant Chief Counsel".

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

25. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR No. 27-5 [Amended]

26. For the text of an Amendment to SFAR No. 27-5, see 14 CFR part 11 of this document.

§ 21.3 [Amended]

27. Section 21.3 is amended, in paragraph (e)(1), by changing the words "FAA Regional Office" to "Aircraft Certification Office", and, in paragraph (f), by changing the words "Chief, Engineering and Manufacturing Branch (or in the case of the Western Region, the Chief, Aircraft Engineering Division), of the FAA regional office in the region" to "Manager of the Aircraft Certification Office for the geographic area".

§ 21.15 [Amended]

28. Section 21.15(a) is amended by changing the words "FAA regional office" to "Aircraft Certification Office".

§ 21.47 [Amended]

29. Section 21.47 is amended by changing the words "FAA Regional Office" to "Aircraft Certification Office".

30. Section 21.75 is revised to read as follows:

§ 21.75 Application.

Applications for provisional type certificates, for amendments thereto, and for provisional amendments to type certificates must be submitted to the Manager of the Aircraft Certification Office for the geographic area in which the applicant is located (or in the case of European, African, Middle East Region, the Manager, Aircraft Engineering Division), and must be accompanied by the pertinent information specified in this subpart.

§ 21.123 [Amended]

31. Section 21.123(c) is amended by changing the words "Regional Director in the region" to "Aircraft Certification Directorate Manager for the geographic area".

32. Section 21.215 is revised to read as follows:

§ 21.215 Application.

Application for provisional airworthiness certificates must be submitted to the Manufacturing

Inspection District Office in the geographic area in which the manufacturer or air carrier is located. The application must be accompanied by the pertinent information specified in this subpart.

§ 21.235 [Amended]

33. Section 21.235(a) is amended by changing the words "FAA Regional Office" to "Aircraft Certification Office".

§ 21.303 [Amended]

34. Section 21.303(c) introductory text is amended by changing the words "Regional Office of the region" to "Manager of the Aircraft Certification Office for the geographic area".

§ 21.435 [Amended]

35. Section 21.435 introductory text is amended by changing the words "FAA Regional Office for the region" to "Aircraft Certification Office responsible for the geographic area".

36. Section 21.605(a) is amended by revising the introductory text to read as follows:

§ 21.605 Application and issue.

(a) The manufacturer (or an authorized agent) shall submit an application for a TSO authorization, together with the following documents, to the Manager of the Aircraft Certification Office for the geographic area in which the applicant is located:

* * * * *

37. Section 21.609(b) is revised to read as follows:

§ 21.609 Approval for deviation.

* * * * *

(b) The request for approval to deviate, together with all pertinent data, must be submitted to the Manager of the Aircraft Certification Office for the geographic area in which the manufacturer is located. If the article is manufactured in another country, the request for approval to deviate, together with all pertinent data, must be submitted through the civil aviation authority in that country to the FAA.

§ 21.611 [Amended]

38. Section 21.611(a) is amended by changing the words "Chief, Engineering and Manufacturing Branch (or in the case of the Western Region, the Chief, Aircraft Engineering Division)," to "Aircraft Certification Office for the geographic area,".

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION**SFAR No. 27-5 [Amended]**

For the text of an amendment to SFAR No. 27-5, see 14 CFR part 11 of this document.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

39-41. The authority for part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, 1522, 1655(c); (Revised Pub. L. 97-449, January 12, 1983).

SFAR No. 27-5 [Amended]

42. For the text of an amendment to SFAR No. 27-5, see 14 CFR part 11 of this document.

§ 45.22 [Amended]

43. Section 45.22(a)(3)(i) is amended by changing the words "General Aviation" to "Flight Standards".

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

44. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983).

§ 61.118 [Amended]

45. Section 61.118(d)(1) is amended by changing the words "General Aviation" to "Flight Standards".

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

46. The authority citation for part 63 continues to read as follows:

Authority: Secs. 313(a), 314, 601, and 607; 49 U.S.C. 1354(a), 1355, 1421, and 1427.

Appendix B to Part 63—[Amended]

47. Appendix B to part 63 is amended in paragraphs (f), (j), (k), and (m) by changing the words "Aviation Safety district office" to "Flight Standards District Office" wherever they appear.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

48. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised), Pub. L. 97-449, January 12, 1983).

§ 65.93 [Amended]

49. Section 65.93(a) is amended by changing the words "General Aviation District Office, a Flight Standards District Office," to "Flight Standards District Office".

§ 65.95 [Amended]

50. Section 65.95(c) is amended by changing the words "General Aviation" to "Flight Standards".

PART 67—MEDICAL STANDARDS AND CERTIFICATION

51. The authority citation for part 67 continues to read as follows:

Authority: Secs. 313(a), 314, 601, 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1355, 1421, and 1427.

§ 67.19 [Amended]

52. Section 67.19 is amended by changing the words "Director of Flight Operations" in paragraph (d)(4) to "Director, Flight Standards Service," and by changing the word "Chief" in paragraph (f) to "Managers".

§ 67.23 [Amended]

53. Section 67.23 is amended by changing the words "Regional Director" to "Regional Administrator" wherever they appear.

§ 67.25 [Amended]

54. Section 67.25(b) is amended by changing the words "Chief, Aeromedical Certification Branch, Civil Aeromedical Institute" to "Chief, Aeromedical Certification Division".

§ 67.27 [Amended]

55. Section 67.27 is amended in paragraph (a) by changing the words "Chief, Aeromedical Certification Branch, Civil Aeromedical Institute" to "Manager, Aeromedical Certification Division" and in paragraphs (b)(3) and (d) by changing the words "Chief, Aeromedical Certification Branch, Civil Aeromedical Institute" to "Manager, Aeromedical Certification Division, AAM-300".

§ 67.29 [Amended]

56. Section 67.29(c) is amended by changing "Chief, Aeromedical Certification Branch, AC-130" to "Manager, Aeromedical Certification Division, AAM-300".

PART 73—SPECIAL USE AIRSPACE

57. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.19 [Amended]

58. Section 73.19 is amended in paragraph (a) by changing the word "Chief" to "Manager" and by changing the words "Air Traffic Service" to "Air Traffic Operations Service" and in paragraph (c) by changing the words "Director of the Air Traffic Service" to "Director, Air Traffic Operations Service".

PART 77—OBJECTS AFFECTING NAVIGABLE AIRSPACE

59. The authority citation for part 77 continues to read as follows:

Authority: 49 U.S.C. 1304, 1348, 1354, 1421 through 1430, 1431, 1501, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983), (Revised Pub. L. 100-223, December 30, 1987).

§ 77.17 [Amended]

60. Section 77.17(a) and (e) are amended by changing the word "Chief" to "Manager".

§ 77.35 [Amended]

61. Section 77.35 is amended by changing the word "Director" to "Manager, Air Traffic Division" wherever it appears.

§ 77.37 [Amended]

62. Section 77.37(c)(1) is amended by changing the word "Director" to "Manager, Air Traffic Division".

§ 77.45 [Amended]

63. Section 77.45(a) is amended by changing the words "Director of the Air Traffic Service" to "Director, Air Traffic Operations Service".

PART 91—GENERAL OPERATING AND FLIGHT RULES

64. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR 27-5 [Amended]

65. Section 10(d)(3) of SFAR No. 27-5 is amended by revising paragraph (iii), by removing paragraphs (ix) and (xi), by redesignating paragraphs (x) and (xii) as paragraphs (ix)–(xii) and by revising newly redesignated paragraphs (ix) through (xii) to read as follows:

SFAR No. 27-5—Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

* * * * *

Sec. 10 Incorporation by reference.

* * * * *

(d) * * *

(3) * * *

(iii) Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, GA 30349.

* * * * *

(ix) Anchorage Aircraft Certification Field Office, 222 W. 7th Avenue, #14, Anchorage, Alaska 99513.

(x) Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, CA 90806.

(xi) Brussels Aircraft Certification Staff, 15 Rue de la Loi, Room B-1040, Brussels, Belgium.

(xii) FAA Representative, Office of U.S. Consulate General, Avenida Presidente Wilson, 147 Rio de Janeiro, Brazil.

* * * * *

SFAR No. 44-5 [Amended]

66. SFAR No. 44-5 is amended by changing the words "Director of the Air Traffic Service" to read "Associate Administrator for Air Traffic" wherever they appear, and by changing "AGC-204" in paragraph 1.(b) of the appendix to read "AGC-10".

Changes to Part 91 in Effect on Effective Date of This Amendment**§ 91.28 [Amended]**

67. Section 91.28(a) is amended by changing the words "Regional Director" to "Flight Standards Division Manager or Aircraft Certification Directorate Manager" wherever they appear.

§ 91.30 [Amended]

68. Section 91.30(a)(2) is amended by changing "Flight Standards Office" to "Flight Standards District Office".

§ 91.41 [Amended]

69. Section 91.41(c) is amended by changing the words "Director of Airworthiness" to "Director, Flight Standards Service".

§ 91.54 [Amended]

70. Section 91.54 is amended by removing the words "General Aviation District Office, or Air Carrier District Office" in paragraph (a)(3); by changing the words "Flight Standards Technical Division" in paragraph (c)(1) to "Aircraft Registration Branch, Attn: Technical Section"; and by removing the words "General Aviation District Office, or Air Carrier District Office," in paragraph (c)(3).

§ 91.100 [Amended]

71. Section 91.100(b)(2) is amended by changing the words "Director, Air

Traffic Service" to "Associate Administrator for Air Traffic".

Changes to Part 91 to Become Effective on August 18, 1990 (54 FR 34291; August 18, 1989)

§ 91.23 [Amended]

72. Section 91.23 is amended by changing the words "Aircraft Registry Technical Section" in paragraph (c)(1) to "Aircraft Registration Branch, Attn: Technical Section".

§ 91.317 [Amended]

73. Section 91.317(c) is amended by changing the words "Director of Airworthiness" to "Director, Flight Standards Service".

§ 91.715 [Amended]

74. Section 91.715(a) is amended by changing the words "Regional Director" to "Flight Standards Division Manager or Aircraft Certification Directorate Manager" wherever they appear.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

75. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), and 1424; The Metropolitan Washington Airports Act of 1986, Title VI of Pub. L. 99-500; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983).

§ 93.221 [Amended]

76. Section 93.221(a)(1) is amended by changing the words "Room 915G, AGC-204," to "AGC-10,".

§ 93.225 [Amended]

77. Section 93.225(e) is amended by changing "AGC-204" to "AGC-10".

PART 109—INDIRECT AIR CARRIER SECURITY

78. The authority citation for part 109 continues to read as follows:

Authority: Secs. 313(a), 316, 601, 1005, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1357, 1421, and 1485); and sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

§ 109.3 [Amended]

79. Section 109.3 is amended by changing the words "Civil Aviation Security Inspector" in paragraph (b) to "Civil Aviation Security Special Agent" and by changing the words "Director of the Office of Civil Aviation Security Service" in paragraph (c)(3) to "Director of Civil Aviation Security".

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

80. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

SFAR No. 36 [Amended]

81. SFAR No. 36 is amended by changing the words "District Office" in paragraph 2 to "Flight Standards District Office".

§ 121.47 [Amended]

82. Section 121.47(a) is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.59 [Amended]

83. Section 121.59(c)(3) is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.77 [Amended]

84. Section 121.77 is amended by changing the words "District Office" to "Flight Standards District Office" wherever they appear and by changing the words "Director of Flight Operations" in paragraph (c) to "Director, Flight Standards Service".

§ 121.79 [Amended]

85. Section 121.79 is amended by changing the words "District Office" to "Flight Standards District Office" wherever they appear; by removing the words "Director of Airworthiness for amendments pertaining to airworthiness or the" in paragraphs (b) and (d); and by changing the words "Director of Flight Operations" to "Director, Flight Standards Service" everywhere they appear.

§ 121.83 [Amended]

86. Section 121.83 is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.97 [Amended]

87. Section 121.97(c) is amended by changing the words "Director of Flight Operations" to "Director, Flight Standards Service" wherever they appear.

§ 121.117 [Amended]

88. Section 121.117(c) is amended by changing the words "Director of Flight Operations" to "Director, Flight Standards Service" wherever they appear.

§ 121.342 [Amended]

89. Section 121.342(b) is amended by changing the words "Director of Flight Operations" to "Director, Flight Standards Service".

§ 121.373 [Amended]

90. Section 121.373(c) is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.405 [Amended]

91. Section 121.405(e) is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.437 [Amended]

92. Section 121.437(c) is amended by changing the words "an Air Carrier or Flight Standards District Office" to "a Flight Standards District Office".

§ 121.565 [Amended]

93. Section 121.565(d) is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.586 [Amended]

94. Section 121.586 (b) and (c) are amended by changing the words "district office" to "Flight Standards District Office".

§ 121.685 [Amended]

95. Section 121.685 is amended by changing the words "Air Carrier" to "Flight Standards".

§ 121.723 [Amended]

96. Section 121.723 is amended by changing the words "Air Carrier" to "Flight Standards" wherever they appear, and by changing "AC-260" in paragraph (b) to "AVN-460".

Appendix C to Part 121—[Amended]

97. Appendix C to part 121 is amended by changing the words "Air Carrier" in paragraph 1.(b) to "Flight Standards".

Appendix G to Part 121—[Amended]

98. Appendix G to part 121 is amended by changing the words "Air Carrier" in paragraph 1.(a) to "Flight Standards".

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

99. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 125.3 [Amended]

100. Section 125.3 is amended, in paragraphs (a) and (b), by changing the words "Associate Administrator for Aviation Standards" to "Administrator", and in paragraph (c), by changing the words "Department of Transportation, Federal Aviation Administration, Associate Administrator for Aviation Standards, 800 Independence Ave., SW., Washington, DC 20591" to "nearest Flight Standards District Office".

§ 125.35 [Amended]

101. Section 125.35 (c) and (d) is amended by changing the words "Director of Airworthiness or the Director of Flight Operations, as appropriate" to "Director, Flight Standards Service".

§ 125.206 [Amended]

102. Section 125.206(b) is amended by changing "Director of Flight Operations" to "Director, Flight Standards Service".

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

SFAR No. 36 [Amended]

For the text of an amendment to SFAR No. 36, see 14 CFR part 121 of this document.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

103.-105. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 129.11 [Amended]

106. Section 129.11(b) is amended by changing the words "International District or Field Office" to "Flight Standards District Office" and by changing the words "Regional Director" to "Regional Flight Standards Division Manager".

Appendix A to Part 129—[Amended]

107. Appendix A to part 129 is amended in paragraph (6) by removing the words "To: The Federal Aviation Administration, Washington, DC, 20553".

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

108. The authority citation for part 133 continues to read as follows:

Authority: 40 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 133.15 [Amended]

109. Section 133.15 is amended by changing the words "a General Aviation, Air Carrier, or Flight Standards District Office of the FAA" to "an FAA Flight Standards District Office".

§ 133.25 [Amended]

110. Section 133.25 is amended in paragraph (a) by changing the words "District Office" to "Flight Standards District Office" wherever they appear and in paragraph (b) by changing the words "district office" to "Flight Standards District Office".

§ 133.27 [Amended]

111. Section 133.27(c) is amended by changing the words "district office" to "Flight Standards District Office".

§ 133.31 [Amended]

112. Section 133.31(b) is amended by changing the words "district office" to "Flight Standards District Office".

§ 133.33 [Amended]

113. Section 133.33(d)(1) is amended by changing the words "district office" to "Flight Standards District Office".

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

114. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR No. 36 [Amended]

115. For the text of an amendment to SFAR No. 36, see 14 CFR Part 121 of this document.

§ 135.17 [Amended]

116. Section 135.17 is amended in paragraph (c) by changing the words "Director of Airworthiness, for amendments pertaining to airworthiness or the Director of Flight Operations for amendments pertaining to flight operations" to "Director, Flight Standards Service,"; and in paragraph (d) by changing the words "Director of Airworthiness for amendments pertaining to airworthiness or the Director of Flight Operations for amendments pertaining to flight operations" to "Director, Flight Standards Service," and by changing the words "that District Office" to "that Flight Standards District Office".

§ 135.39 [Amended]

117. Section 135.39(d) is amended by changing the words "Chief of the Flight Standards Division" to "Flight Standards Division Manager".

§ 135.153 [Amended]

118. Section 135.153(b)(1) is amended by changing the words "Director of Flight Operations" to "Director, Flight Standards Service".

§ 135.158 [Amended]

119. Section 135.158(b) is amended by changing the words "Director of Flight Operations" to "Director, Flight Standards Service".

§ 135.267 [Amended]

120. Section 135.267(g) is amended by changing the words "Director of Flight Operations" to "Director, Flight Standards Service" wherever they appear.

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

121. The authority citation for part 137 continues to read as follows:

Authority: Secs. 313(a), 307(c), 601 and 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1348(c), 1421, and 1427.

§ 137.1 [Amended]

122. Section 137.1(c) is amended by changing the words "District Office" to "Flight Standards District Office".

§ 137.15 [Amended]

123. Section 137.15 is amended by changing the words "District Office" to "Flight Standards District Office".

§ 137.17 [Amended]

124. Section 137.17 is amended by changing the words "District Office" to "Flight Standards District Office" wherever they appear and by changing the words "Director of Flight Operations" in paragraph (d) to "Director, Flight Standards Service".

§ 137.51 [Amended]

125. Section 137.51(b)(3) is amended by changing the words "Federal Aviation Administration District Office" to "FAA Flight Standards District Office".

§ 137.77 [Amended]

126. Section 137.77(c) is amended by changing the words "District Office" to "Flight Standards District Office".

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

127. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 1354(a) and 1432; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

128. Section 139.3 is amended by removing the definition for "Regional Director" and adding a new definition "Regional Airports Division Manager" in alphabetical order, to read as follows:

§ 139.3 Definitions.

* * * * *

Regional Airports Division Manager means the airports division manager for the FAA region in which the airport is located.

* * * * *

§ 139.103 [Amended]

129. Section 139.103(a) is amended by changing the words "Regional Director" to "Regional Airports Division Manager".

§ 139.111 [Amended]

130. Section 139.111(c) is amended by changing the words "Regional Director" to "Regional Airports Division Manager".

§ 139.113 [Amended]

131. Section 139.113 is amended by changing the words "Regional Director" to "Regional Airports Division Manager".

§ 139.217 [Amended]

132. Section 139.217 is amended by changing the words "Regional Director" or "Regional Director's" to "Regional Airports Division Manager" or "Regional Airports Division Manager's" respectively, wherever they appear.

§ 139.319 [Amended]

133. Section 139.319(h)(3) is amended by changing the words "Regional Director" to "Regional Airports Division Manager".

§ 139.321 [Amended]

134. Section 139.321(g) is amended by changing the words "Regional Director" to "Regional Airports Division Manager".

PART 141—PILOT SCHOOLS

135. The authority citation for part 141 continues to read as follows:

Authority: Secs. 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427), and sec. 6(c) of the Dept. of Transportation Act (49 U.S.C. 1655(c)).

§ 141.25 [Amended]

136. Section 141.25 is amended by changing the words "District Office" to "Flight Standards District Office" wherever they appear.

§ 141.53 [Amended]

137. Section 141.53(b) is amended by changing the words "District Office" to "Flight Standards District Office".

§ 141.67 [Amended]

138. Section 141.67 is amended by changing the words "District Office" to "Flight Standards District Office" wherever they appear.

§ 141.87 [Amended]

139. Section 141.87(a) is amended by changing the words "District Office" to "Flight Standards District Office".

§ 141.91 [Amended]

140. Section 141.91(d) is amended by changing the words "District Office" to "Flight Standards District Office".

§ 141.93 [Amended]

141. Section 141.93(b) is amended by changing the words "District Office" to "Flight Standards District Office".

PART 145—REPAIR STATIONS

142. The authority citation for part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1355, 1421, and 1427, unless otherwise noted.

SFAR No. 36 [Amended]

143. For the text of an amendment to SFAR No. 36, see 14 CFR part 121 of this document.

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

144. The authority citation for part 150 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, 1431, 2101, 2102, 2103(a), 2104 (a) and (b), 2201, et seq.; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)

145. Section 150.7 is amended by removing the definition for "Regional Director" and adding a new definition "Regional Airports Division Manager" in alphabetical order, to read as follows:

§ 150.7 Definitions.

* * * * *

Regional Airports Division Manager means the Airports Division Manager having responsibility for the geographic area in which the airport in question is located.

* * * * *

§ 150.13 [Amended]

146. Section 150.13(e)(1) is amended by changing the words "Room 916" to "AGC-10".

§ 150.21 [Amended]

147. Section 150.21 is amended by changing the words "Regional Director" to "Regional Airports Division Manager" wherever they appear.

§ 150.23 [Amended]

148. Section 150.23 is amended by changing the words "Regional Director" to "Regional Airports Division Manager" wherever they appear.

§ 150.31 [Amended]

149. Section 150.31 is amended by changing the words "Regional Director" to "Regional Airports Division Manager" wherever they appear.

§ 150.33 [Amended]

150. Section 150.33(e) is amended by changing the words "Regional Director" to "Regional Airports Division Manager" wherever they appear.

§ 150.35 [Amended]

151. Section 150.35 is amended by changing the words "Regional Director" to "Regional Airports Division Manager" wherever they appear.

PART 153—ACQUISITION OF U.S. LAND FOR PUBLIC AIRPORTS

152. The authority citation for part 153 continues to read as follows:

Authority: 49 U.S.C. 2402 and 2424; the Metropolitan Washington Airports Act of 1986, Pub. L. 99-591, October 30, 1986.

§ 153.5 [Amended]

153. Section 153.5 is amended by changing the words "Area Manager for the area" to "Regional Airports Division Manager for the region".

PART 169—EXPENDITURE OF FEDERAL FUNDS FOR NONMILITARY AIRPORTS OR AIR NAVIGATION FACILITIES THEREON

154. The authority citation for part 169 continues to read as follows:

Authority: Secs. 308, 313, 72 Stat. 750, 752; 49 U.S.C. 1349, 1354; 49 U.S.C. 1655.

§ 169.3 [Amended]

155. Section 169.3(a) is amended by changing the words "Regional Airport Division or District Office" to "Regional Airports Division or Airports District Office".

§ 169.5 [Amended]

156. Section 169.5(d) is amended by changing the words "Regional

Directors" to "Regional Airports Division Managers".

PART 171—NON-FEDERAL NAVIGATION FACILITIES

157. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 1343, 1346, 1348, 1354(a), 1355, 1401, 1421-1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449 January 12, 1983).

§ 171.73 [Amended]

158. Section 171.73 is amended by changing the words "Regional Director" to "Regional Administrator".

§ 171.75 [Amended]

159. Section 171.75 is amended by changing the words "Systems Research and Development Service" in paragraph (a) to "Advanced System Design Service" and by changing the words "Regional Director" in paragraph (b) to "Regional Administrator".

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

160. The authority citation for part 183 continues to read as follows:

Authority: Secs. 301(c), 305, 307(b), 313(a), and 314, 72 Stat. 744; 49 U.S.C. 1341(c), 1346, 1348(b), 1354(a), and 1355, and sec. 501, 65 Stat. 290; 31 U.S.C. 483a.

§ 183.11 [Amended]

161. Section 183.11 is amended by changing the words "The Chief of the Aircraft Engineering Division, or the Chief's designee" in paragraph (c)(1) to "The Manager, Aircraft Certification Office, or the Manager's designee"; by changing the words "The Chief of the Aircraft Manufacturing Division, or the Chief's designee" in paragraph (c)(2) to "The Manager, Aircraft Certification Directorate, or the Manager's designee"; by changing the words "Director, Air Traffic Service" in paragraph (d) to "Associate Administrator for Air Traffic"; and by changing the words "The Director of Airworthiness" in paragraph (e) to "The Director, Aircraft Certification Service."

§ 183.15 [Amended]

162. Section 183.15(b) is amended by changing the words "Flight Standards Designated Representative" to "Flight Standards and Aircraft Certification Service Designated Representative".

§ 183.25 [Amended]

163. Section 183.25(c)(2) is amended by changing the words "Director, Air Traffic Service" to "Associate Administrator for Air Traffic".

§ 183.29 [Amended]

164. Section 183.29(i) is amended by changing the words "Director, Environment and Energy" to "Director of Environment and Energy".

165. Section 183.33(a) is revised to read as follows:

§ 183.33 Designated Airworthiness Representative.

(a) Perform examination, inspection, and testing services necessary to the issuance of certificates, including issuing certificates, as authorized by the Director, Flight Standards Service, in the area of maintenance, or as authorized by the Director, Aircraft Certification Service, in the areas of manufacturing and engineering.

PART 185—TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS, AND SERVICE OF LEGAL PROCESS AND PLEADINGS

166. The authority citation for part 185 continues to read as follows:

Authority: Secs. 303, 313, 72 Stat. 747, 752; 49 U.S.C. 1344, 1354, 1655; Part 9 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 9) as amended (34 FR 11972).

§ 185.5 [Amended]

167. Section 185.5 is amended by changing the words "regional counsel, the Aeronautical Center counsel, and the NAFEC counsel" to "Assistant Chief Counsel, the Assistant Chief Counsel for the Aeronautical Center, and the Assistant Chief Counsel for the Technical Center".

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

186. The authority citation for part 189 continues to read as follows:

Authority: Secs. 301(c), 305, 307(b), 313(a), and 314, 72 Stat. 744; 49 U.S.C. 1341(c), 1346, 1348(b), 1354(a), and 1355, and sec. 501, 65 Stat. 290; 31 U.S.C. 483a.

§ 189.5 [Amended]

169. Section 189.5(d) is amended by changing the word "Director" to "Administrator".

PART 191—WITHHOLDING SECURITY INFORMATION FROM DISCLOSURE UNDER THE AIR TRANSPORTATION SECURITY ACT OF 1974

170. The authority citation for part 191 continues to read as follows:

Authority: Secs. 313(a), 316(d)(2), 601 Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1357(d)(2), 1421); sec. 6(c), Dept. of Transportation Act (49 U.S.C. 1655(c)).

§ 191.3 [Amended]

171. Section 191.3(a) is amended by changing the words "Director, to FAA Civil Aviation Security Service" to "Director of Civil Aviation Security".

§ 191.5 [Amended]

172. Section 191.5 is amended by changing the words "Director, to FAA Civil Aviation Security Service" to "Director of Civil Aviation Security".

§ 191.7 [Amended]

173. Section 191.7 is amended by changing the words "Director, Civil Aviation Security Service" to "Director of Civil Aviation Security".

PART 199—AIRCRAFT LOAN GUARANTEE PROGRAM

174. The authority citation for part 199 continues to read as follows:

Authority: Act of Sept. 7, 1957 (49 U.S.C. 1324 Note; 62 Stat. 1003), as amended, Pub. L. 95-504, sec. 6(a)(3)(A) and 9 of the Dept. of Transportation Act (49 U.S.C. 1655(a)(3)(A) and 1657) and sec. 1.4(b)(4) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.4(b)(4)).

§ 199.25 Deviation from terms of agreement or guarantee.

175. Section 199.25 is amended by revising the last sentence to read as follows:

* * * Requests for such approval shall be made in writing and sent along with appropriate supporting documentation to the Director of Aviation Policy and Plans, APO-1, 800 Independence Ave. SW., Washington, DC 20591.

§ 199.27 [Amended]

176. Section 199.27 is amended by changing the word "function," to "functions".

Appendix A to Part 199—[Amended]

177. Appendix A to part 199 is amended by changing the words "Civil Aeronautics Board" to "Office of the Secretary of Transportation" in paragraph (2).

Issued in Washington, DC, on September 15, 1989.

James B. Busey,
Administrator.

[FR Doc. 89-22317 Filed 9-22-89; 8:45 am]

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Federal Register

Monday
September 25, 1989

Part IV

Environmental Protection Agency

40 CFR Parts 260, 261, and 262

Mining Waste Exclusion and Definition of
Designated Facility; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 262

[SWH-FRL 3642-8; EPA/OSW-FR-89-025]

Mining Waste Exclusion and Definition of Designated Facility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In today's notice, EPA proposes to permanently remove seven of the 20 conditionally retained mineral processing wastes from the Bevill exclusion. Wastes removed from the exclusion will become subject to hazardous waste regulations if they are found to exhibit a hazardous characteristic or are otherwise identified or listed as hazardous. In compliance with a Court order, the Agency will finalize the scope of the Bevill exclusion for the 20 mineral processing wastes by January 15, 1990. The seven wastes proposed for removal from the Bevill exclusion are: roast/leach ore residue from primary chromite production, process wastewater from coal gasification, furnace off-gas solids from elemental phosphorus production, process wastewater from hydrofluoric acid production, process wastewater from primary lead processing, sulfate process waste acids from titanium dioxide production, and sulfate process waste solids from titanium dioxide production. Wastes remaining within the exclusion will be addressed in a Report to Congress and subsequent Regulatory Determination by January 31, 1991.

In addition, today's notice contains a proposal to modify the RCRA subtitle C definition of "designated facility" for purposes of clarifying the requirements for completing hazardous waste shipment manifests for transporting wastes from one state where they are regulated as hazardous to another in which they are not regulated as hazardous.

Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, EPA interpreted this exclusion (on a temporary basis) to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980).

EPA proposed the criteria by which mineral processing wastes would be

evaluated for continued exclusion on October 20, 1988 (53 FR 41288) and proposed revisions to the criteria on April 17, 1989 (54 FR 15316). On August 18 (see 54 FR 36592; September 1, 1989), EPA published the final criteria, and took final action on the Bevill status of all but 20 mineral processing waste streams. The Agency conditionally retained these 20 mineral processing wastes within the exclusion from subtitle C regulation provided by section 3001(b)(3)(A)(ii) of RCRA pending collection and analysis of additional information.

DATES: EPA will accept public comments on this proposal until November 9, 1989. The Agency will hold a public hearing on October 27, 1989 from 9:00 a.m. to 5:00 p.m., unless concluded earlier.

ADDRESSES: Requests to speak at the public hearing should be submitted in writing to the Public Hearings Officer, Office of Solid Waste, (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public hearing will be at the Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC. The hearing will begin at 9:00 a.m., with registration beginning at 8:30 a.m. The hearing will end at 5:00 p.m., unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict these to 15 minutes, and are requested to provide written comments for inclusion in the official record.

Those wishing to submit public comments for the record must send an original and two copies of their comments to the following address: RCRA Docket Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket #F-89-MW2P-FFFFF on your comments.

The OSW docket is located in room M2427 at EPA headquarters. The docket is open from 9:00 to 4:00 Monday through Friday, except for Federal holidays. Members of the public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. Copies cost \$0.15/page.

FOR FURTHER INFORMATION, CONTACT: RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000, or for technical information contact Dan Derkics or Bob Hall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3608, or (202) 475-8814, respectively.

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I. Introduction

A. History

Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, EPA interpreted this exclusion (on a temporary basis) to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980).

EPA proposed the criteria by which mineral processing wastes would be evaluated for continued exclusion on October 20, 1988 (53 FR 41288) and proposed revisions to the criteria on April 17, 1989 (54 FR 15316). On September 1, 1989 (see 54 FR 36592), EPA provided the final Bevill exclusion criteria. (See section II of this preamble for a complete presentation of the definitions of mineral processing and beneficiation wastes and the high volume and low hazard criteria.)

The September rulemaking also finalized the Bevill status of nine mineral processing waste streams that had been proposed either for retention within or removal from the exclusion in the April 1989 notice. EPA temporarily retained for study in the July 1990 Report to Congress five wastes within the Bevill exclusion:

1. Slag from primary copper processing.
2. Slag from primary lead processing.
3. Red and brown muds from bauxite processing.
4. Phosphogypsum from phosphoric acid production.
5. Slag from elemental phosphorus production.

EPA permanently removed the remaining four wastes from the Bevill exclusion:

1. Acid plant and scrubber blowdown from primary copper processing.
2. Acid plant blowdown from primary lead processing.
3. Furnace scrubber blowdown from elemental phosphorus production.
4. Air pollution control scrubber blowdown from primary tin processing.

In addition, the Agency modified the list of mineral processing wastes proposed for conditional retention in April 1989. In the September 1989 rulemaking, the Agency conditionally retained 20 mineral processing wastes within the Bevill exclusion:

1. Roast/leach ore residue from primary chromite production.
2. Gasifier ash from coal gasification.
3. Process wastewater from coal gasification.
4. Calcium sulfate wastewater treatment plant sludge from primary copper processing.
5. Slag tailings from primary copper processing.
6. Furnace off-gas solids from elemental phosphorus production.
7. Fluorogypsum from hydrofluoric acid production.
8. Process wastewater from hydrofluoric acid production.
9. Air pollution control dust/sludge from iron blast furnaces.
10. Iron blast furnace slag.
11. Process wastewater from primary lead production.
12. Air pollution control dust/sludge from lightweight aggregate production.
13. Process wastewater from primary magnesium processing by the anhydrous process.
14. Process wastewater from phosphoric acid production.
15. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production.
16. Basic oxygen furnace and open hearth furnace slag from carbon steel production.
17. Sulfate process waste acids from titanium dioxide production.
18. Sulfate process waste solids from titanium dioxide production.
19. Chloride process waste solids from titanium tetrachloride production.
20. Slag from primary zinc processing.

All other mineral processing wastes that were not conditionally retained will be permanently removed from the Bevill exclusion as of the effective date of the September 1, 1989 rule (March 1, 1990 in non-authorized states) and will be subject to RCRA subtitle C regulation if they are solid wastes and exhibit one or more of the characteristics of hazardous waste as defined in 40 CFR part 261. In addition, the Agency could, in the future, propose one or more of these wastes for listing as a hazardous waste under 40 CFR 261.10-11. No such action is, however, being taken at this time.

Today's proposal also includes another issue which may affect not only wastes removed from the Bevill exclusion, but other newly listed or identified wastes. EPA's generator regulations require a generator of hazardous waste to designate on the manifest one facility which is permitted to handle the waste described on the manifest. The Agency has received a number of inquiries regarding waste shipments from a state where a waste is

considered to be hazardous to a state where the waste is not regulated as hazardous. This situation can arise when EPA lists or identifies a new waste as hazardous under its pre-HSWA authority, as is proposed in today's notice implementing the final Bevill criteria for mineral processing wastes. EPA believes that the regulatory language should be clarified regarding these interstate waste shipments.

B. Overview of Today's Proposed Rule

Today's proposed rule describes the results of the Agency's application of the high volume and low hazard criteria contained in the September 1, 1989 rule to the 20 conditionally retained mineral processing wastes. This application involved a three-step process (section IV of this preamble discusses each step in greater detail). First, the Agency applied the high volume criteria to the available waste generation data for the 20 wastes. These data consisted of detailed information supplied by over 200 mineral processing facilities in EPA's 1989 National Survey of Solid Wastes from Mineral Processing Facilities, as well as information independently submitted by these and other facilities in response to recent Agency actions. For each conditionally retained waste, the Agency calculated the highest average annual facility-level generation rate during 1983-1988. Mineral processing wastes generated above the volume criteria thresholds (an average annual rate of 45,000 metric tons per facility for non-liquid wastes, and 1,000,000 metric tons for liquid wastes) passed the high volume criterion.

In the second step, the Agency evaluated the status of each of the 20 wastes with respect to the low hazard criterion using the relevant waste characteristics data available to the Agency. These data primarily consisted of the analytical data results from a mineral processing waste sampling and analysis effort conducted by EPA at selected mineral processing facilities during June and July, 1989, supplemented by EPA method 1312 data independently submitted by two facilities. As described in section IV.A of this preamble, EPA considered a waste to pose a low hazard only if the waste passed both a toxicity and mobility test (Method 1312) and a pH test.

The third step involved consolidating the results from the first two steps to determine the proposed Bevill status of the 20 conditionally retained mineral processing wastes.

Applying these criteria, EPA today proposes to remove seven mineral

processing wastes from the Bevill exclusion, and to temporarily retain 13 mineral processing wastes within the exclusion (in addition to the five already retained in the September 1 rule), pending preparation of a Report to Congress and the subsequent Regulatory Determination. The seven mineral processing wastes proposed for removal from the Bevill exclusion are:

1. Roast/leach ore residue from primary chromite production.
2. Process wastewater from coal gasification.
3. Furnace off-gas solids from elemental phosphorus production.
4. Process wastewater from hydrofluoric acid production.
5. Process wastewater from primary lead processing.
6. Sulfate process waste acids from titanium dioxide production.
7. Sulfate process waste solids from titanium dioxide production.

The 13 mineral processing wastes proposed for temporary retention within the Bevill exclusion are:

1. Gasifier ash from coal gasification.
2. Calcium sulfate wastewater treatment plant sludge from primary copper processing.
3. Slag tailings from primary copper processing.
4. Fluorogypsum from hydrofluoric acid production.
5. Air pollution control dust/sludge from iron blast furnaces.
6. Iron blast furnace slag.
7. Air pollution control dust/sludge from lightweight aggregate production.
8. Process wastewater from primary magnesium processing by the anhydrous process.
9. Process wastewater from phosphoric acid production.
10. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production.
11. Basic oxygen furnace and open hearth furnace slag from carbon steel production.
12. Chloride process waste solids from titanium tetrachloride production.
13. Slag from primary zinc processing.

The Agency will take final action on the scope of the Bevill exclusion for mineral processing wastes by January 15, 1990. In addition, the Agency is today proposing a clarification to the definition of "designated facility" to alleviate any confusion that the public and the regulated community may have over its applicability. Today's proposal would provide that if a waste is sent to an authorized state where the waste is not regulated as hazardous, then the designated facility must be a facility allowed by the state to accept the

waste. This regulatory change would only apply where a hazardous waste in one state is shipped to a facility in a second state that has not yet regulated the waste as hazardous. (In fact, EPA currently interprets the definition of "designated facility" in this manner.)

EPA solicits public comment on the data used to make the proposed Bevill mineral processing waste exclusion decisions outlined below, and on the proposed modification to the definition of "designated facility." The Agency will not, however, entertain or respond to comments on the final Bevill mineral processing wastes criteria. These criteria were made final in the September 1 rule, and were developed following and in response to comments submitted in two public comment periods subsequent to NPRMs published in October, 1988 and April, 1989.

C. Future Activities

This rule proposes the final Bevill exclusion status of 20 conditionally retained mineral processing wastes, based upon information collected by or submitted to the Agency during recent months. EPA will take final action on the proposed wastes by January 15, 1990. At that time, the final boundaries of the Bevill exclusion for mineral processing wastes will be established.

EPA will conduct a detailed study of all mineral processing wastes retained within the final Bevill exclusion boundaries. EPA will summarize the findings of these studies in a Report to Congress to be submitted by July 31, 1990.

Six months after submission of this report, the Agency will publish a Regulatory Determination stating whether any of the studied wastes merits regulation under subtitle C of RCRA as hazardous wastes, or that such regulation is unwarranted.

II. The Bevill Exclusion Definitions and Criteria

On August 18, 1989 (See 54 FR 36592; September 1, 1989), EPA finalized the definitions of mineral processing and beneficiation wastes and the high volume and low hazard criteria that the Agency used as the basis of the analysis underlying today's proposed rule. This section simply restates the criteria as presented in the September 1, 1989 *Federal Register*. EPA wishes to emphasize that the mineral processing and beneficiation definitions and volume and hazard criteria are final, and thus, the Agency does not solicit, and will not respond to, comments on them.

A. Definition of Mineral Processing and Beneficiation

For purposes of this rule, mineral processing wastes are generated by operations downstream of beneficiation (as defined by the September 1, 1989 rule) and originate from a mineral processing operation as defined by the following elements:

(1) Excluded Bevill wastes must be solid wastes as defined by EPA.

(2) Excluded solid wastes must be uniquely associated with mineral industry operations.

(3) Excluded solid wastes must originate from mineral processing operations that possess all of the following attributes:

a. Follow beneficiation of an ore or mineral (if applicable);

b. Serve to remove the desired product from an ore or mineral, or from a beneficiated ore or mineral, or enhance the characteristics of ores or minerals, or beneficiated ores or minerals;

c. Use mineral-value feedstocks that are comprised of less than 50 percent scrap materials;

d. Produce either a final mineral product or an intermediate to the final product; and

e. Do not combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying), do not involve fabrication or other manufacturing activities, and do not involve further processing of a marketable product of mineral processing.

(4) Residuals from treatment of excluded mineral processing wastes must be historically or presently generated and must meet the high volume and low hazard criteria in order to retain excluded status.

Beneficiation operations include crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining to remove water and/or carbon dioxide, roasting in preparation for leaching (except where the roasting/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing), gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and heap, dump, vat, tank, and *in situ* leaching.

Processing operations generally follow beneficiation and include techniques that often destroy the ore or mineral, such as smelting, electrolytic refining, and acid attack or digestion.

EPA wishes to emphasize that operations following the initial "processing" step in the production sequence are also considered processing operations, irrespective of whether they involve only the techniques defined above as beneficiation. In addition, leaching operations that are not followed by additional beneficiation/processing operations are also defined as processing operations. Therefore, solid wastes arising from such operations are considered mineral processing wastes, rather than beneficiation wastes.

B. The High Volume Criterion

High volume mineral processing wastes are defined as (1) non-liquid mineral processing wastes that were generated at an average annual rate greater than 45,000 metric tons per year per facility during any year between 1983 and 1988, and (2) liquid mineral processing wastes that were generated at an average annual rate greater than 1,000,000 metric tons per year per facility during any year between 1983 and 1988.

For the purposes of today's proposed rule, EPA used the volume criterion for non-liquids to determine if both solid (e.g., slag, phosphogypsum) and semi-solid (e.g., wastewater treatment sludge) materials are high volume. EPA used the volume criterion for liquids to determine whether wastewaters and other aqueous wastes are high volume. EPA employed professional judgment in deciding which criterion to apply to particular waste streams.

C. The Low Hazard Criterion

1. The Toxicity and Mobility Test

A high volume mineral processing waste is not low hazard and, therefore, is not eligible for the temporary exclusion from subtitle C requirements provided by the Bevill Amendment under the following conditions:

- Available data indicate that waste extracts obtained using EPA Method 1312 and analyzed using established SW-846 methods contain concentrations of arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver that exceed 100 times the MCL for the constituent at two or more facilities that generate the waste, unless:

- i. The waste is generated at five or more facilities; and
- ii. Substantial additional relevant data are available and the preponderance of these additional data indicate that the waste should be considered low hazard, where:

- a. Relevant data are defined as data that result from analysis of waste

extracts obtained by EPA Methods 1310, 1311, and 1312, ASTM Test Method D3987-81, or comparable procedures that the Agency has reason to believe produce reliable and representative data; and

- b. To be considered substantial, the additional data must characterize the waste at 3 plants (other than the plants where Method 1312 results exceed 100 times the MCLs) or at least half of the facilities that generate the waste (other than the plants where Method 1312 results exceed 100 times the MCLs), whichever number of plants is larger.

- Constituent concentrations measured in waste sample extracts obtained using Method 1312 are used to determine facility-level values as follows:

- i. If data for only one sample of the waste are available, then these data determine the facility-level constituent concentrations; and

- ii. If data on two or more samples are available, then the lower bound of the 80 percent confidence interval of the mean of the data¹ serves as the facility-level constituent concentrations, where the confidence interval is calculated for each waste for each constituent using all results (from all plants generating the waste) available from testing of the waste using Method 1312.

2. The pH Test

A high volume mineral processing waste is not low hazard and, therefore, is not eligible for the temporary exclusion from subtitle C requirements provided by the Bevill Amendment under the following circumstances:

- Fewer than five facilities generate the waste and the pH (determined as required by 40 CFR 261.22) is less than one (1.0) or greater than 13.5 at two or more facilities that generate the waste, or if five or more facilities generate the waste and the pH is less than one (1.0) or greater than 13.5 at 50 percent or more of the facilities that generate the waste.

- pH values measured for waste samples are used to determine facility-level values for individual candidate low hazard wastes as follows:

- i. If a datum for only one sample from a facility is available, this datum determines the facility-level pH; and

¹ The 80 percent confidence interval is recommended (guidance) in Chapter 9 on sampling in SW-846 as the confidence interval to be used for evaluating whether wastes pass or fail regulatory thresholds. Because the low hazard criterion is being used as a screening test to remove wastes that are clearly not low hazard from the Bevill exclusion, EPA is using the lower bound of the 80 percent confidence interval to compare with the relevant standards.

- ii. If data on two samples from a facility are available, the lower value determines the facility-level pH; and

- iii. If data on more than two samples from a facility are available, the median value defines the facility-level pH.

III. Overview of Twenty Conditionally Retained Mineral Processing Wastes

This section provides brief descriptions of each of the conditionally retained mineral processing wastes. The purpose of this discussion is to identify the facilities and processing operations that generate the waste streams, and, where applicable, the component parts comprising particular waste streams. EPA has previously conditionally retained these wastes within the Bevill exclusion, and today is proposing either to retain them within or withdraw them from the exclusion, based upon the final high volume and low hazard criteria discussed above. Accordingly, the Agency is not seeking public comment upon these waste descriptions, but only upon the volume and hazard data underlying these proposed Bevill exclusion decisions. To clarify the scope of this and previous notices, in today's proposal the Agency generally refers to specific wastes arising from "processing" or "production" operations, as opposed to the more specific terminology (e.g., smelting, refining) used in the previous proposed and final rules. Thus, for example, copper or lead slags are generated by primary "processing," rather than by primary "smelting" or "smelting/refining."

A. Roast/Leach Ore Residue from Primary Chromite Production

The primary chromite industry processes chromite ore to produce sodium chromate and dichromate, the latter of which is the starting point for most chromium chemicals used in electroplating, chromium metal, pigments, dyes, inks, photography, leather and wood preserving. The hydrometallurgical process involves roasting, leaching, neutralization with sulfuric acid, and filtering; insoluble dregs remain (i.e., the chromite ore roast/leach residue) that are expected to contain traces of soluble chromium. Two companies operate one facility each that generates chromite ore roast/leach residue.

B. Gasifier Ash from coal Gasification

Coal gasification is the process of converting low grade coal and lignite to synthetic natural gas of pipeline quality. The only commercial coal gasification plant in full operation in the United

States is the Dakota Gasification Company's Great Plains Coal Gasification Plant, located at Beulah, Mercer County, North Dakota. This plant employs the Lurgi High Pressure Coal Gasification Technology.

Run-of-mine lignite coal is crushed and fed to each gasifier; steam and oxygen are introduced at the bottom of each gasifier to effect the coal gasification reactions. Ash discharged from the gasifiers is quenched and sluiced by a water jet down a sloped sluiceway to one of two wet wells and then pumped to one of two dewatering bins. Water from the dewatering bins is recycled within the system and the dewatered gasifier ash, with a moisture content of approximately 15 percent, is discharged and trucked back to the mine for disposal.

C. Process Wastewater from Coal Gasification

Following the processing steps described above, the hot crude product gas leaving the gasifiers is cleaned of tar and dust by cooling in quench vessels, steam generators, and coolers (See "B. Gasifier Ash from Coal Gasification" above for introduction and discussion of previous steps). The gas stream, which consists of methane, ethane, hydrogen, hydrogen sulfide, carbon monoxide, carbon dioxide, and nitrogen, is then purified of hydrogen sulfide and carbon dioxide. The purified gas is methanated to convert all the carbon monoxide and a portion of the carbon dioxide by reaction with hydrogen to produce methane. After the methanation step, the product gas is compressed and dried for delivery to the pipeline.

The remaining gas liquor stream is referred to by the operator of this facility as "stripped gas liquor or wastewater." The reported management practice is to include this process wastewater as part of the makeup water delivered to the cooling tower.

D. Calcium Sulfate Wastewater Treatment Plant Sludge from Primary Copper Processing

Facilities that process copper ore concentrate generate various aqueous waste streams which are typically treated; the effluent is often released, and the sludge is either disposed of or recycled to recover the mineral value. Two types of wastewater treatment are known to be employed at present. These two types, one using sodium hydroxide and the other using calcium oxide or hydroxide (lime), generate very different proportions of sludge, because sodium hydroxide typically precipitates very little sludge. Treatment using lime as the neutralizing agent generates a relatively

large quantity of sludge known as calcium sulfate sludge. At least two facilities are known to use lime and generate calcium sulfate wastewater treatment plant sludge. At least one other facility is known to use sodium hydroxide for wastewater treatment.

E. Slag Tailings from Primary Copper Processing

The process of smelting copper ores to fuse the metal value and separate the bullion from the impurities generates slag. Often this slag contains copper at a higher percentage than the original ores. Consequently, several copper processing facilities reprocess this slag using beneficiation-like activities (e.g., crushing, grinding, washing, and flotation). As a result of this reprocessing, or slag concentration, a residue referred to as slag tailings from primary copper processing is generated. According to industry sources, this material is presently managed along with tailings from beneficiation operations, which are claimed to be very similar with respect to physical and chemical characteristics. Two facilities are believed to generate slag tailings from primary copper processing. One smelter and refinery presently uses a Noranda slag concentrator; the other smelter and refinery employs a mill which crushes, grinds, and floats the slag from the flash furnace, thereby generating slag tailings.

F. Furnace Off-Gas Solids from Elemental Phosphorus Production

Elemental phosphorus is produced in five plants in Tennessee, Idaho, and Montana. The plants are supplied by nearby phosphate reserves which constitute their principal feed source. Phosphorus, obtained by reduction of phosphate rock, is oxidized to produce high purity phosphoric acid for specialty uses and is converted into a variety of phosphorus-containing chemicals and metallic phosphides.

Sized phosphate rock, or sintered/agglomerated phosphate rock fines are charged to an electric arc furnace together with coke as a reductant and silica as a flux. The reduction generates a calcium silicate slag and ferrophosphorus, which are tapped, and carbon monoxide off-gases, which contain volatilized phosphorus. This furnace off-gas materials stream is typically processed to remove impurities, which generates the furnace offgas solids. Phosphorus is removed from the gas stream by condensation in the presence of recirculating water above the melting point of phosphorus. The recirculating water is neutralized, and a purge of "mud" and soluble

impurities is removed and disposed; these are separate and may be distinguished from the furnace off-gas solids. Furnace off-gas solids are generally referred to as roaster residue, evaporator residue, precipitator slurry, or treater dust, depending on the method of processing the off-gas to remove impurities.

G. Fluorogypsum from Hydrofluoric Acid Production

Hydrofluoric acid, produced at three facilities in the United States, is used in a variety of chemical processing and manufacturing operations. In the production process, acid-grade fluorspar is reacted with sulfuric acid in a heated retort to produce hydrogen fluoride gas. This gas is purified by scrubbing, and the hydrogen fluoride gas is condensed. The chemical is marketed as anhydrous hydrogen fluoride, a colorless fuming liquid, or it may be absorbed in water to form hydrofluoric acid, usually 70 percent hydrogen fluoride. The material remaining in the retort furnace is calcium sulfate, commonly known as fluorogypsum. This waste stream is stacked in gypsum stacks at one facility; treated, impounded, dredged, and landfilled at a second facility; and stacked and sold at a third facility.

H. Process Wastewater from Hydrofluoric Acid Production

The production of hydrofluoric acid results in the generation of large quantities of process wastewater from cooling, condensing, and fluorogypsum transport (see "G. Fluorogypsum from hydrofluoric acid production" above for an introduction and process description). Much of the wastewater is typically recirculated to the system although part of this waste may be treated and discharged.

I. Air Pollution Control Dust/Sludge from Iron Blast Furnaces

Iron is a basic metal used in diverse industrial applications. Iron is a primary material for most land vehicles and mobile equipment, ships, and machinery, almost all large structures, tanks, pressure vessels, piping, and a variety of cans and containers.

Iron is produced from ore either by blast furnaces or by one of several direct reduction processes. The modern blast furnace consists of a refractory-lined steel shaft in which the charge is continuously added to the top through a gas seal and preheated air is blown through the tuyeres at the bosh near the bottom, to be emitted as combustible gas (top gas). Molten iron and slag are intermittently tapped from the hearth at

the bottom. The top gases emitted from the blast furnace must be treated before release. Air pollution control (APC) devices generate either APC dusts, in cases where baghouses or electrostatic precipitators are used, or APC sludges, in cases where wet scrubbers are used.

J. Iron Blast Furnace Slag

Iron blast furnace slag, tapped from blast furnaces, is removed and either disposed or processed and sold (see "I. Air pollution control dust/sludge from iron blast furnaces" above for the iron sector introduction and process description).

K. Process Wastewater from Primary Lead Production

Lead is ranked fifth in tonnage among major metals, after iron, copper, aluminum, and zinc. Major properties of the metal include: low melting point, ease of casting, high density, low strength, ease of fabrication, acid resistance, and chemical stability. Traditional uses of lead include storage batteries, and sheet lead or cable sheathing. Consumption of lead has markedly declined recently because of the decline in the use of lead for gasoline additives. Five lead facilities were operating in 1988, consisting of one smelter, one refinery, and three smelter/refineries.

Lead processing includes smelting and refining. Smelting involves several successive processes that convert prepared lead ore concentrate into impure lead bullion ready for refining. Sintered lead ore is introduced into a blast furnace with coke, limestone, and other fluxing materials. Next, lead bullion is drossed. Finally, the drossed lead bullion is decopperized. The initial step in the refining process is softening. The softened lead bullion is then desilvered to remove gold and silver. Calcium and magnesium are then added to remove bismuth. Finally, the lead bullion is mixed with fluxes to remove the remaining impurities.

Process wastewater is generated at many points in the smelting and refining of lead, and, for purposes of this rule, includes waters generated by slag or speiss granulation, contact cooling, and at some plants, neutralized acid plant blowdown effluent. This waste stream does not, however, include wastewaters from upstream beneficiation operations such as sintering. Industry sources have indicated that solids are settled out and the water is reused.

L. Air Pollution Control Dust/Sludge from Lightweight Aggregate Production

Lightweight aggregate is a building material that is used in concrete in place

of normal stone, and for other purposes. Concrete made with lightweight aggregate has about the same strength, but weighs approximately one-third less than normal concrete.

Lightweight aggregate is made by heating certain types of clay, shale, and slate in a rotary kiln to a temperature of at least 1,950 °F, forcing the materials to expand or "bloat". The rotary kilns that are used at lightweight aggregate facilities and the process itself are very similar to those employed in the production of cement and lime.

During production operations, large volumes of gas leave the kiln, typically containing particulate matter which must be removed using either dry collection techniques or wet scrubbers (i.e., APC dust/sludge).

M. Process Wastewater From Primary Magnesium Processing by the Anhydrous Process

Magnesium, a light but relatively strong metal, is used as a component of transportation equipment, castings, and wrought products. The largest use of magnesium is in manufacturing aluminum-base alloys which in turn are used in applications such as beverage cans and auto parts.

There are three active magnesium primary processing facilities in the United States. Two of the facilities use an electrolytic process, and one facility uses a silicothermic process.

The anhydrous process uses calcium chloride to remove impurities from the brine. After removal of solid impurities, the solution is concentrated and then solidified as magnesium chloride crystals in a spray dryer. A heated reactor is used to remove impurities and the resultant molten magnesium chloride is sent to an electrolytic cell where crystals are formed. The magnesium crystals are recast into ingots. Process wastewaters generated during the anhydrous process are acidic (pH < 2) and are managed in evaporation ponds.

N. Process Wastewater from Phosphoric Acid Production

Commercial grade phosphoric acid from wet processing is used primarily as a feedstock for the production of ammoniated fertilizers and in animal feed, with a small portion going to chemical processing operations. In the wet method, the phosphate rock is dissolved in phosphoric acid, to which sulfuric acid is added. The slurry from this operation is sent to filters where the solids are collected, washed, and sent to phosphogypsum stacks. Process wastewaters are generated at several points in the wet process, including phosphogypsum transport, phosphoric

acid concentration, and phosphoric acid temperature control and cooling (e.g., barometric condensers and flash coolers).

O. Basic Oxygen Furnace and Open Hearth Furnace Air Pollution Control Dust/Sludge From Carbon Steel Production

The steel industry is composed of three sectors. Large integrated steel companies—with blast furnaces able to produce iron and basic oxygen furnaces further processing iron into steel—account for approximately 80 percent of the raw steel production. This sector produces much of the iron ore, coal, and limestone needed in its plants. The capacity of these plants has been reduced over the past few years. Minimills, or market mills, typically use electric furnaces and continuous casting to produce a limited range of products from scrap; specialty mills produce relatively small quantities of high quality, high value products. Neither of these last two sector types produce Bevil wastes because they do not typically use ores or minerals as their primary feedstock(s). All contemporary steelmaking processes convert iron, scrap, or direct-reduced iron, or mixtures of these, into steel by a refining process that lowers the carbon and silicon content and removes impurities, mainly phosphorus and sulfur. The excess oxygen is then neutralized by adding deoxidizing elements such as manganese, silicon, or aluminum. Exhaust gas from the open hearth and basic oxygen furnaces is scrubbed to remove gases and particulate matter. The scrubbers may be dry collection devices, resulting in air pollution control dust or wet scrubbers, resulting in a sludge (i.e., APC dust/sludge).

P. Basic Oxygen Furnace and Open Hearth Furnace Slag from Carbon Steel Production

In the open hearth process—the dominant steelmaking method in the U.S. between 1908 and 1969—a relatively shallow bath of metal is heated by a flame that passes over the bath from burners at one end of the furnace while the hot gases resulting from combustion are used at the other end of the furnace to heat checker-brick regenerators (see "O. Basic oxygen furnace and open hearth furnace Air Pollution Control Dust/Sludge from carbon steel production" for additional process details). Slag is generated during the refining process and is removed and sold or disposed.

The most recently developed steelmaking process is the basic oxygen

process. In this process, a jet of pure oxygen is injected into the molten metal by a lance of regulated height in a basic refractory-lined converter. Excess carbon, silicon, and other reactive elements are oxidized during the controlled blows, and fluxes are added to form a slag which is removed and processed and sold or disposed.

Q. Sulfate Process Waste Acids from Titanium Dioxide Production

Titanium dioxide is the major end product manufactured from the processing of titanium-bearing minerals, principally ilmenite and rutile. In addition, synthetic rutile and titanium-bearing slags are used as a feedstock for producing titanium dioxide pigment. Environmental problems associated with the sulfate process led to a closure of several sulfate pigment plants and conversion to chloride process technology at other facilities; in the United States most of the production (nine of 11 plants) is by the chloride process (though sulfate processes generate half the world's production). About 50 percent of the total U.S. consumption of TiO_2 is used in paints, while about 25 percent is used in paper coating. Plastics markets have been increasingly important and constitute about 18 percent of the U.S. consumption.

The sulfate process is currently used by two companies, each owning one plant. The process uses ilmenite, treated with strong sulfuric acid at temperatures up to 180 °C, as a feedstock. The resultant reaction produces hydrated iron sulfate and titanium oxysulfate ($TiOSO_4$). The sludge is removed, and the liquid is evaporated in a vacuum. After cooling, the crystallized hydrous iron sulfate is filtered, and the filtrate concentrated to over 200 gm/l. Low-temperature heating of the $TiOSO_4$ solution results in hydrolysis to titanyl hydroxide ($TiO(OH)_2$) and sulfuric acid, a major waste acid stream. The precipitate is washed with water and weak sulfuric acid, a second waste acid stream, to remove trace elements (particularly heavy metals) and calcined to TiO_2 at 1,000 °C. The highly acidic waste streams of the sulfate process and residual solids are the primary waste streams from this process.

R. Sulfate Process Waste Solids from Titanium Dioxide Production

Waste acids from the sulfate process are filtered, generating residual solids (see "Q. Sulfate processing waste acids from titanium dioxide production" for the introduction and process description).

S. Chloride Process Waste Solids from Titanium Tetrachloride Production

Titanium tetrachloride is the major end product manufactured from the processing of titanium-bearing minerals, principally ilmenite and rutile. In addition, synthetic rutile and titanium-bearing slags are used as a feedstock for producing titanium tetrachloride. Most of the titanium tetrachloride is used to produce titanium dioxide, the remainder is used to produce titanium metal or chemicals. One firm operates four titanium tetrachloride plants, while another operates three facilities, and four others operate one each. Three of the companies that own only one plant principally produce titanium metal.

The chloride process involves fluidized roasting and chlorination of rutile, synthetic rutile, slag, or beneficiated ilmenites at about 1,000 °C. The product formed is a titanium tetrachloride. This is a volatile chloride and is collected. The nonvolatile chlorides are disposed. Further purification includes the separation of volatile vanadium oxychloride by mineral oil complexing and H_2S reduction. To form titanium dioxide, the purified $TiCl_4$ is oxidized with fuel and air at 985 °C, and the chlorine gas is recycled. Waste solids are generated as part of the acid stream from air pollution control treatment of off-gases.

T. Slag from Primary Zinc Processing

Zinc is used in many industries for several purposes. The construction industry accounts for approximately 45 percent of zinc consumption, followed by transportation, 20 percent; machinery, 10 percent; electrical, 10 percent; and chemical and other industries 15 percent. Slab zinc is primarily used for galvanizing and electrogalvanizing, as well as zinc-base alloys, brass and bronze alloys, and rolled zinc.

Zinc metal production uses either electrolytic techniques or pyrometallurgical techniques to produce slab from unrefined ore. Only one facility currently produces zinc using pyrometallurgy. The pyrometallurgical zinc smelting process uses a retort and condensation operation. The zinc concentrate is first roasted, then sintered. The sinter product is retorted in a furnace, which drives the zinc off in gaseous form. The zinc is condensed and refined. The material remaining in the retort furnace is the primary zinc processing slag. Part of this slag is reprocessed to recover mineral values, while the remainder is disposed.

IV. Application of Bevill Exclusion Criteria

EPA applied the Bevill exclusion criteria to each of the 20 conditionally retained mineral processing wastes in a three-step process. First, the Agency applied the high volume criteria to the available waste generation data for the 20 wastes. In the second step, the Agency applied the low hazard criterion to the available waste characteristics data for the wastes. Finally, the Agency combined the results from the first two steps to determine the proposed Bevill status of the 20 conditionally retained mineral processing wastes. Each step is discussed separately below.

A. High Volume Criterion

1. Methodology

There were two major sources of waste generation data for the 20 conditionally retained mineral processing wastes: EPA's 1989 National Survey of Solid Wastes from Mineral Processing Facilities, and data submitted in response to EPA's requests for public comments published in recent proposed mineral waste rulemakings. As EPA explained in the September 1 final rule, the Agency conditionally retained all wastes which appeared to meet the high volume criterion based upon information submitted in public comments on the October and April NPRMs. Since, however, the data in these public comments was unsworn and unverified, EPA committed to evaluating the National Survey data for this proposal to confirm the information found in public comment. The National Survey data were not available in time for use in the September 1 final rule.

EPA conducted the National Survey of Solid Wastes from Mineral Processing Facilities during 1989 under the authority of RCRA §§ 3001 and 3007. These Sections give EPA the power to require facilities to furnish information about their generation and management of certain solid wastes (as defined in CFR Part 261) for use in regulatory development. This past spring, EPA collected data from over 200 facilities, focusing on 47 wastes generated or received by mineral processing facilities that the Agency thought, at the time, might be large volume wastes. The data collected include general facility information (e.g., ownership, location, and mineral processing operations); waste generation characteristics; processing units, wastewater treatment plants, surface impoundments, and other residuals management units that receive a candidate special waste; environmental monitoring; and other

related information. The data only cover waste generation and management practices occurring in 1988.

The second source of data consists of data voluntarily submitted to the Agency by the mineral processing industry in comments on recent rulemakings. The 47 special wastes included in the survey reflected the Agency's view of the universe of potential Bevill wastes at the time of the development of the survey instrument in the fall of 1988. Since that time, the Agency has added several wastes to the list of candidate special wastes, often in response to data submitted by the mineral processing industry—these wastes, therefore, were not included in the survey. In these cases, the Agency relied on the industry-supplied data in order to make its determination of Bevill status. In addition, the Agency used the industry-supplied data to supplement the data obtained in the survey in order to determine the highest average annual generation rate between 1983 and 1988.

For each of the conditionally retained wastes, EPA divided the total 1988 sector-wide waste generation quantity obtained in the survey by the number of facilities that generated the waste during 1988. For wastes that did not meet the high volume threshold for 1988, EPA analyzed the responses to the survey questionnaire in more detail, to determine whether the 1988 data might be anomalous (e.g., production and waste generation rates were below normal due to plant renovations or labor strikes). The Agency then reviewed the information submitted in public comment (the basis for many of the proposed conditional exclusions) in an attempt to reconcile any significant discrepancies. In cases where normalized waste generation data as reported for 1988 are in reasonable agreement with the information

submitted in public comment, the Agency has accepted the waste generation rates provided by commenters and concluded that the waste(s) in question pass the high volume criterion. In cases where these data are not in agreement, however, EPA has tentatively concluded that the materials in question are not high volume mineral processing wastes, and, accordingly, has proposed to remove them from the Bevill exclusion in today's notice. The data and calculations underlying EPA's determinations of high and low volume mineral processing wastes are presented in a background document that may be found in the docket for this proposed rule.

Representatives of facilities that generate wastes that have been proposed for removal from Bevill on the basis of volume that believe that the data that they submitted for 1988 do not reflect waste generation rates throughout the period from 1983 to 1988 must submit information fully documenting this claim by the close of the public comment period for this proposal November 9, 1989. Documentation should include a description of the production process(es) generating the waste (a process flow diagram is strongly recommended), the specific point(s) in the mineral processing sequence that give rise to the waste, the waste generation rate and physical state (including percent solids), and management practice information (through final disposition of the material in question).

2. Results of Applying the High Volume Criterion

Table 1 summarizes the results of applying the high volume criterion to the available waste generation data for the 20 conditionally retained wastes. The average waste generation data reported

in Table 1 do not, in all cases, reflect information collected from all facilities generating a particular waste, because in responding to the National Survey, many facility operators designated their waste generation rates Confidential Business Information (CBI). In no case, however, would including CBI waste generation data in this table influence the results of EPA's application of the high volume criterion, i.e., the CBI data in EPA's possession support the determinations that the Agency has made here regarding compliance with the Bevill mineral processing wastes high volume criterion.

Of the 14 non-liquid mineral processing wastes, only two were not generated at an average annual rate greater than 45,000 metric tons per year, during one or more years between 1983 and 1988. These two wastes, therefore, fail the high volume criteria and do not qualify for the Bevill exclusion:

1. Furnace off-gas solids from elemental phosphorus production
2. Sulfate process waste solids from titanium dioxide production

Of the six liquid mineral processing wastes, three were not generated at an average annual rate greater than 1,000,000 metric tons per year, during at least one year between 1983 and 1988. These wastes, therefore, fail the high volume criteria and do not qualify for the Bevill exclusion:

1. Process wastewater from coal gasification
2. Process wastewater from hydrofluoric acid production
3. Process wastewater from primary lead processing

In summary, 15 of the 20 conditionally retained wastes satisfy the high volume criterion. The Agency proposes to remove the conditional Bevill status for the five low volume wastes listed above.

TABLE 1.—RESULTS OF APPLYING THE HIGH VOLUME CRITERION TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES*

Commodity sector	Conditionally retained waste	Solid or liquid	Average per facility generation (mt/yr)	Notes	No. of facilities reporting	Passes high volume criterion
Chromite	Roast/Leach Ore Residue	Solid	W/H	A,B	2	Yes.
Coal Gas	Gasifier Ash	Solid	244,940	B	1	Yes.
Coal Gas	Process Wastewater	Liquid	598,030	C	1	No.
Copper	Calcium Sulfate Wastewater Treatment Plant Sludge	Solid	1,179,341	A,B	2	Yes.
Copper	Slag Tailings	Solid	1,028,684	C	2	Yes.
Elemental Phosphorus	Furnace Off-gas Solids	Solid	4,885	A,C	5	No.
Hydrofluoric Acid	Fluorogypsum	Solid	266,564	C	2	Yes.
Hydrofluoric Acid	Process Wastewater	Liquid	n/a	C	0	No.
Iron	Air Pollution Control Dust/Sludge	Solid	88,263	B,C	24	Yes.
Iron	Blast Furnace Slag	Solid	742,198	B	25	Yes.
Lead	Process Wastewater	Liquid	785,562	A,C	5	No.
Lightweight Aggregate	Air Pollution Control Dust/Sludge	Solid	134,065	B,C	6	Yes.
Magnesium	Anhydrous Process Wastewater	Liquid	2,464,822	B	1	Yes.
Phosphoric Acid	Process Wastewater	Liquid	56,359,141	B,C	21	Yes.

TABLE 1.—RESULTS OF APPLYING THE HIGH VOLUME CRITERION TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES*—Continued

Commodity sector	Conditionally retained waste	Solid or liquid	Average per facility generation (mt/yr)	Notes	No. of facilities reporting	Passes high volume criterion
Steel.....	Basic Oxygen Furnace and Open Hearth Furnace Air Pollution Control Dust/Sludge.	Solid.....	66,069	B,C	4	Yes.
Steel.....	Basic Oxygen Furnace and Open Hearth Furnace Slag.	Solid.....	533,771	B	24	Yes.
Titanium Dioxide.....	Sulfate Process Waste Acids.....	Liquid.....	W/H	A,B	2	Yes.
Titanium Dioxide.....	Sulfate Process Waste Solids.....	Solid.....	W/H	A,C	1	No.
Titanium Tetrachloride.....	Chloride Process Waste Solids.....	Solid.....	85,788	A,B	9	Yes.
Zinc.....	Slag.....	Solid.....	156,943	B	1	Yes.
Total Number of Wastes Meeting High Volume Criterion.....						15.
Total Number of Wastes Failing High Volume Criterion.....						5.

*Data are from 1989 National Survey of Solid Wastes from Mineral Processing Facilities.

W/H— withheld to avoid disclosing confidential business information (CBI).

A. The data for one or more of the generating facilities are CBI.

B. Generation data obtained directly from the survey.

C. Calculated or interpreted by EPA based on information provided in the survey.

B. Low Hazard Criterion

1. Methodology

During the summer of 1989, EPA collected samples of each of the 20 conditionally retained mineral processing wastes. For each waste, EPA took at least one sample from each of two or more of the facilities currently generating the waste, unless there was only one generator. For each liquid sample, EPA conducted a pH test, and for every liquid and non-liquid sample, the Agency analyzed the potential waste constituent mobility and toxicity using Method 1312.

If the testing results indicated that one or more samples of a given waste exceeded one or more of the regulatory levels (100 times the MCLs) presented in the low hazard criterion, EPA applied the statistical test outlined above in Section II.C to determine the status of the waste with respect to the low hazard criterion. If no samples exceeded the regulatory levels, EPA considered the waste low hazard.

2. Results of Applying the Low Hazard Criterion to Individual Waste Streams

In the following paragraphs, EPA discusses the coverage and results of the waste sampling and analysis activities that have been conducted in support of this rulemaking. These results focus on data obtained using EPA's Synthetic Precipitation Leaching Procedure (SPLP), also referred to as "Method 1312." For clarity, the discussion emphasizes, but is not limited to, test results of individual waste samples collected at the facilities visited in EPA's waste sampling program, rather than results derived from comparisons of the 80th percent lower confidence interval (calculated from all samples across the sector) with

the appropriate regulatory levels (the procedure used to implement the low hazard criterion). The data and calculations underlying EPA's determinations of high and low hazard mineral processing wastes are presented in a background document that may be found in the docket for today's proposed rule.

a. *Roast/Leach Ore Residue from Primary Chromite Production.* Two facilities were included in the sampling study; however, the data from one facility are CBI and cannot be reported. One sample of residue was collected and analyzed from the non-CBI facility. All constituents except barium and chromium were below detectable limits. Barium levels for this facility were below 1 percent of the regulatory level, while chromium values were detected at nearly 1,700 percent of the regulatory level (100 times the MCLs). The lower 80th percent confidence interval for total chromium concentrations, as applied to the waste at both facilities, indicates that this waste fails the low hazard criterion at each of the two facilities that generate it. Accordingly, EPA is today proposing to remove roast/leach ore residue from primary chromite production from the Bevill exclusive.

b. *Gasifier Ash From Coal Gasification.* One coal gasification facility was included in the sampling study. From this facility, two samples of ash were collected and analyzed. Most constituents were not above detectable levels. Arsenic and barium, however, were found in detectable quantities, although well below regulatory levels (100 times the MCLs). The SPLP procedure showed levels at about four percent of the regulatory level for arsenic, while for barium the procedure showed detectable levels below 1

percent of the regulatory level (100 times the MCLs). Because of Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

c. *Process Wastewater From Coal Gasification.* From the coal gasification facility visited in the sampling study, three wastewater samples from different areas were collected and analyzed. Most constituents measured were below detectable limits for the SPLP method, but some detectable levels were noted. The SPLP procedure for arsenic showed levels up to about 4 percent of the regulatory level. The SPLP procedures for barium and mercury only ranged up to below 1 percent of the regulatory level. Selenium levels were as high as 95 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste and because no field pH measurements were below 1.0, EPA concludes that it passes the low hazard criterion.

d. *Calcium Sulfate Wastewater Treatment Plant Sludge From Primary Copper Processing.* Two facilities were included in the sampling study; the data from one facility, however, are Confidential Business Information (CBI) and cannot be reported. One sample of sludge was collected and analyzed from the non-CBI facility. Again, most constituents measured were below detectable limits. The arsenic concentration obtained using the SPLP procedure showed levels at about 30 percent of the regulatory level. Barium was measured at below 1 percent of the regulatory level, while lead and mercury were not detectable in the SPLP procedure. Selenium concentrations in the SPLP procedure extract were almost

90 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

e. Slag Tailings from Primary Copper Processing. Two primary copper smelters were included in the sampling study. From each facility, one sample of slag tailings was collected and analyzed. Most constituents measured were below detectable limits using the SPLP method, but some detectable levels were noted (e.g., for lead). Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

f. Furnace Off-Gas Solids From Elemental Phosphorus Production. Two facilities were included in the sampling study. One sample of off-gas solids from each facility was collected and analyzed. Most constituents were below detectable limits using the SPLP method, but some detectable levels were noted. The SPLP procedure for cadmium generated values from about 5 percent up to 249 percent of the regulatory level (100 times MCL). Lead analysis concentrations ranged from about 10 to 20 percent of the regulatory level. Because the lower 80th percentile confidence limit for all constituent concentrations was below 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

g. Fluorogypsum from Hydrofluoric Acid Production. Three facilities were included in the sampling study. One sample of fluorogypsum from each facility was collected and analyzed. Most constituents were below detectable limits. Barium was found at below 1 percent of the regulatory level (100 times the MCLs) in the SPLP procedure. Cadmium levels ranged from below detectable to 6 percent of the regulatory levels in the three samples. Chromium and lead levels were similar, ranging from below detection up to about 60 percent of the regulatory level. Mercury was found in concentrations of about 2 percent of the regulatory level in the SPLP procedure. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

h. Process Wastewater From Hydrofluoric Acid Production. Two facilities were included in the sampling study. One sample of wastewater from each facility was collected and analyzed. Most constituents were below detectable limits. Arsenic levels ranged from 2 up to 20 percent of the regulatory level (100 times the MCLs), while barium levels were at or below 1 percent of the

regulatory level. Chromium concentrations were from 20 to 58 percent of the regulatory level in both procedures. Lead was found from 10 to 61 percent of the regulatory level for the SPLP procedure. Mercury levels were below 1 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, and because all pH measurements of the waste were greater than 1.0, EPA concludes that it passes the low hazard criterion.

i. Air Pollution Control Dust/Sludge From Iron Blast Furnaces. Four facilities were included in the sampling study. One sample from each of three facilities, and two samples from the remaining facility were collected and analyzed, for a total of five samples. Most constituents were below detectable limits for the SPLP method. Barium levels ranged from below detection to about 1 percent of the regulatory level. Cadmium and lead were not detected. Mercury levels ranged from below detection up to 1 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

j. Iron Blast Furnace Slag. Four facilities were included in the sampling study. One sample of slag from each of two facilities was collected and analyzed, while two samples from the third facility, and three samples from the remaining facility, were collected and analyzed, for a total of seven samples. Most constituents were below detectable limits. Barium and mercury levels ranged from below detection to about 1 percent of the regulatory levels. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

k. Process Wastewater from Primary Lead Processing. Three facilities were included in the sampling study. From each facility, one sample of wastewater was collected and analyzed. Most constituents measured were below detectable limits. Arsenic levels ranged from two to 400 percent of the regulatory level (100 times the MCLs). Barium concentrations were below three percent of the regulatory level when detected. Cadmium levels ranged from 33 percent up to almost 700 percent of the regulatory level. Lead ranged from about five percent up to about 145 percent of the regulatory level. Mercury concentrations were generally not detectable, and did not exceed 1 percent of the regulatory level otherwise. Selenium levels ranged from below detection up to about 13 percent of the

regulatory level. All field pH measurements were above 1.0. Because the lower 80th percentile confidence limit for a constituent exceeds regulatory levels at two different facilities (arsenic and cadmium, respectively), i.e., two facilities fail the low hazard criterion, EPA tentatively concludes that this waste stream fails the low hazard criterion.

l. Air Pollution Control Sludge/Solids From Lightweight Aggregate Production. Two facilities were included in the sampling study; however, the data from one facility are CBI and cannot be reported. One sample of sludge was collected and analyzed from the non-CBI facility. Again, all constituents except barium were below detectable limits using the SPLP method. Barium levels for this facility were below 1 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

m. Process Wastewater From Primary Magnesium Processing by the Anhydrous Process. One primary magnesium processing facility was included in the sampling study. From this facility, one sample of wastewater was collected and analyzed. Most constituents were not above detectable levels. Barium, chromium, and lead were below detection. Mercury was detected in the sample, but at less than 1 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, and because all field pH measurements were above 1.0, EPA concludes that the waste passes the low hazard criterion.

n. Process Wastewater From Phosphoric Acid Production. Two facilities were included in the sampling study. Three samples of wastewater from one facility, and four samples from the other facility were collected and analyzed, for a total of seven samples. Most constituents were below detectable limits. Arsenic levels ranged from below detectable to about 38 percent of the regulatory level, while barium concentrations ranged from below detection up to about 1 percent of regulatory levels. Cadmium and chromium concentrations ranged from about 20 percent up to about 60 percent of the regulatory levels. Lead values ranged from below detection up to about 3 percent of the regulatory level. Mercury concentrations were below detection limits. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, and because all field pH measurements were

above 1.0, EPA concludes that the waste passes the low hazard criterion.

o. Basic Oxygen and Open Hearth Furnace Air Pollution Control Dust/Sludge From Carbon Steel Production. Three facilities were included in the sampling study. One sample from each of the first two facilities and two samples from the third facility were collected and analyzed, for a total of four samples. Most constituents were below detectable limits. When barium and mercury levels were detectable, they remained below 1 percent of the regulatory levels. Cadmium and lead concentrations were below detection. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

p. Basic Oxygen and Open Hearth Furnace Slag From Carbon Steel Production. Three facilities were included in the sampling study. One slag sample from the first facility, two samples from the second facility, and three samples from the third facility were collected and analyzed, for a total of six samples. Most constituents were below detectable limits. Barium and mercury concentrations ranged from below detection to well below 1 percent of the regulatory levels. Selenium was below detection. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

q. Sulfate Process Waste Acids From Titanium Dioxide Production. Two facilities were included in the sampling study. From each facility, one sample of waste acids was collected and analyzed. Most constituents were below detectable limits. Chromium levels,

however, were found to range from about 700 percent to 1600 percent of the regulatory level, i.e., exceeded the regulatory level at both facilities. Concentrations of selenium also exceed the criterion at one facility. This waste, as sampled, also had an extremely low pH. Because of this uniformly low pH (< 1) and the relatively high metals concentrations, EPA has tentatively concluded that this waste fails the low hazard criterion.

r. Sulfate Process Waste Solids From Titanium Dioxide Production. Two facilities were included in the sampling study. From each facility, one sample of waste solids was collected and analyzed. Concentrations of all constituents evaluated for the low hazard criterion were below detectable limits and regulatory levels. Because no Method 1312 constituent concentrations exceed 100 times the MCLs for this waste, EPA concludes that it passes the low hazard criterion.

s. Chloride Process Waste Solids From Titanium Tetrachloride Production. Three facilities were included in the sampling study. From each facility, one sample of waste solids was collected and analyzed. Most constituents measured were below detectable limits. Barium levels ranged from below detectable up to 2.5 percent of the regulatory level (100 times the MCLs). Chromium levels ranged from below detection up to 2,000 percent of the regulatory levels. Lead levels ranged from below detection up to about 1,000 percent of the regulatory level. Even when mercury levels were detectable in the SPLP procedure, they did not exceed 1 percent of the regulatory level. Silver levels were generally below detection for both procedures, but did range up to

30 percent of the regulatory level in the SPLP procedure. Importantly, the constituent concentrations that exceeded regulatory levels for this waste all came from the same sample, and only the lower 80th percent confidence intervals for constituents applied to this facility exceed regulatory levels. Therefore, because only one facility failed the low hazard criterion while two facilities passed, EPA has concluded that this waste stream passes the low hazard criterion.

t. Slag From Primary Zinc Processing. The single facility from this sector known to generate this waste was included in the sampling study. From this facility, one sample of slag was collected and analyzed. Only one constituent (barium) was found at detectable levels, but its concentration was below 1 percent of the regulatory level. Because no Method 1312 constituent concentrations exceed 100 times MCLs for this waste, EPA concludes that it passes the low hazard criterion.

3. Summary of Results

Table 2 summarizes the results of applying the low hazard criterion to the available waste generation data for the 20 conditionally retained wastes. The sampling data indicate that all but three of these wastes satisfy the low hazard criterion. Accordingly, EPA is proposing to remove the following wastes from the conditional Bevill exemption, pending a final rulemaking by January 15, 1990:

1. Roast/leach ore residue from primary chromite production
2. Process wastewater from primary lead processing
3. Sulfate process waste acids from titanium dioxide production

TABLE 2.—RESULTS OF APPLYING THE LOW HAZARD CRITERION TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES

Commodity sector	Conditional retained waste	No of fac. believed to generate waste	No of fac. sampled by EPA	No of fac. submitting method 1312 data	Passes low hazard criterion	Reason for failure
Chromite	Roast leach ore residue	2	2	0	No	Cr
Coal Gas	Gasifier ash	1	1	0	Yes	N/A
Coal Gas	Process wastewater	1	1	0	Yes	N/A
Copper	Calcium sulfate wastewater treatment plant sludge	2	2	0	Yes	N/A
Copper	Slag Tailings	2	2	1	Yes	N/A
Elemental phosphorus	Furnace off-gas solids	5	2	0	Yes	N/A
Hydrofluoric acid	Fluorogypsum	3	2	1	Yes	N/A
Hydrofluoric acid	Process wastewater	3	2	0	Yes	N/A
Iron	Air pollution control dust/sludge	30	4	0	Yes	N/A
Iron	Blast furnace slag	30	4	0	Yes	N/A
Lead	Process wastewater	5	3	0	No	As, Cd, Pb
Lightweight aggregate	Air pollution control dust/sludge	28	2	0	Yes	N/A
Magnesium	Anhydrous process wastewater	1	1	0	Yes	N/A
Phosphoric acid	Process wastewater	28	2	0	Yes	N/A
Steel	Basic oxygen furnace and open hearth furnace air pollution control dust/sludge	27	3	0	Yes	N/A

TABLE 2.—RESULTS OF APPLYING THE LOW HAZARD CRITERION TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES—Continued

Commodity sector	Conditional retained waste	No of fac. believed to generate waste	No of fac. sampled by EPA	No of fac. submitting method 1312 data	Passes low hazard criterion	Reason for failure
Steel.....	Basic oxygen furnace and open hearth furnace slag.....	27	3	0	Yes.....	N/A
Titanium dioxide.....	Sulfate process waste acids.....	2	2	0	No.....	pH,Cr,Se
Titanium dioxide.....	Sulfate process waste acids.....	2	2	0	Yes.....	N/A
Titanium tetrachloride.....	Chloride process waste solid.....	9	3	0	Yes.....	N/A
Zinc.....	Slag.....	1	1	0	Yes.....	N/A
Total number of wastes meeting low hazard criterion.....				0	17.....	
Total number of wastes failing low hazard criterion.....				0	3.....	

C. Consolidation of Results

In order for a mineral processing waste to qualify for continued retention in the Bevill exclusion, it must meet both the high volume and the low hazard criteria. Combining the results from the volume and hazard assessments yields the proposed list of temporarily excluded mineral processing wastes, which are presented and discussed in section V, below.

V. Proposed Bevill Status of Twenty Conditionally Retained Mineral Processing Wastes

A. Wastes Proposed for Retention within the Exclusion

Based on applying the Bevill exclusion criteria to the available data for each of the 20 conditionally retained wastes,

EPA proposes to retain 13 mineral processing wastes within the exclusion, and remove the remaining seven. The proposed status of each of the 20 wastes and the basis for EPA's proposed Bevill exclusion decisions are presented in Table 3. The list of temporarily excluded Bevill mineral processing wastes in the proposed regulatory language below (40 CFR 261.4(b)(7) (i)-(xviii)) includes 18 wastes: the five retained in the September 1 final rule and the 13 proposed for retention today.

B. Wastes Proposed for Removal from the Exclusion

EPA proposes to permanently remove the remaining seven wastes from the Bevill exclusion:

1. Roast/leach ore residue from primary chromite production

2. Process wastewater from coal gasification

3. Furnace off-gas solids from elemental phosphorus production

4. Process wastewater from hydrofluoric acid production

5. Process wastewater from primary lead processing

6. Sulfate process waste acids from titanium dioxide production

7. Sulfate process waste solids from titanium dioxide production

EPA will make final Bevill exclusion decisions on these wastes by January 15, 1990. The Agency solicits public comment on the data used in today's proposed rule. The Agency will not, however, respond to comments that concern the content of the actual criteria; these criteria are now in final form.

TABLE 3.—RESULTS OF APPLYING BOTH BEVILL CRITERIA TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES

Commodity sector	Conditionally retained waste	No. of fac. believed to generate waste	Passes high volume criterion	Passes low hazard criterion	Retained within Bevill exclusion
Chromite.....	Roast/Leach ore residue.....	2	Yes.....	No.....	No
Coal Gas.....	Gasifier ash.....	1	Yes.....	Yes.....	Yes
Coal gas.....	Process wastewater.....	1	No.....	Yes.....	No
Copper.....	Calcium sulfate wastewater treatment plant sludge.....	2	Yes.....	Yes.....	Yes
Copper.....	Slag tailings.....	2	Yes.....	Yes.....	Yes
Elemental phosphorus.....	Furnace off-gas solids.....	5	No.....	Yes.....	No
Hydrofluoric acid.....	Fluorogypsum.....	3	Yes.....	Yes.....	Yes
Hydrofluoric acid.....	Process wastewater.....	3	No.....	Yes.....	No
Iron.....	Air pollution control dust/sludge.....	30	Yes.....	Yes.....	Yes
Iron.....	Blast furnace slag.....	30	Yes.....	Yes.....	Yes
Lead.....	Process wastewater.....	5	No.....	No.....	No
Lightweight aggregate.....	Air pollution control dust/sludge.....	28	Yes.....	Yes.....	Yes
Magnesium.....	Anhydrous process wastewater.....	1	Yes.....	Yes.....	Yes
Phosphoric acid.....	Process wastewater.....	28	Yes.....	Yes.....	Yes
Steel.....	Basic oxygen furnace and open hearth furnace air pollution control dust/sludge.....	27	Yes.....	Yes.....	Yes
Steel.....	Basic oxygen furnace and open hearth furnace slag.....	27	Yes.....	Yes.....	Yes
Titanium dioxide.....	Sulfate process waste acids.....	2	Yes.....	No.....	No
Titanium dioxide.....	Sulfate process waste acids.....	2	No.....	Yes.....	No
Titanium tetrachloride.....	Chloride process waste solids.....	9	Yes.....	Yes.....	Yes
Zinc.....	Slag.....	1	Yes.....	Yes.....	Yes
Total number of wastes retained within Bevill exclusion.....					13

TABLE 3.—RESULTS OF APPLYING BOTH BEVILL CRITERIA TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES—Continued

Commodity sector	Conditionally retained waste	No. of fac. believed to generate waste	Passes high volume criterion	Passes low hazard criterion	Retained within Bevill exclusion
Total number of wastes withdrawn from Bevill exclusion.					7

VI. Regulatory Implementation and Effective Dates of the Final Rule

In accordance with the March 14, 1989 order of the U.S. Court of Appeals for the D.C. Circuit, EPA intends to finalize this proposed rule by January 15, 1990. (See *Environmental Defense Fund v. EPA*, 852 F.2d 1316 (D.C. Cir. 1988)). As of the effective date of the final rule (i.e., six months after the final rule appears in the *Federal Register*), all mineral processing wastes that have been conditionally excluded from regulation under Subtitle C of RCRA since 1980, except the thirteen wastes described above in Section V, may be subject to Subtitle C requirements in those states that do not have authorization to administer their own hazardous wastes program in lieu of EPA. Generators, transporters, and treatment, storage, and disposal (TSD) facilities in authorized states will be subject to RCRA requirements imposed as a result of the final rule only after the state revises its program to adopt equivalent requirements and EPA authorizes the revision.

The requirements imposed as a result of removing the temporary exclusion include: determining whether the solid waste(s) exhibit hazardous characteristics (40 CFR 262.11) and, for those wastes that are hazardous; obtaining an EPA identification number for managing hazardous wastes (40 CFR 262.34); complying with recordkeeping and reporting requirements (40 CFR 262.40–262.43); and obtaining interim status and seeking a permit (or modifying interim status, including permit applications or modifying a permit, as appropriate) (40 CFR Part 270).

A. Section 3010 Notification

Not later than 90 days after publication of the final rule, all persons who generate, transport, treat, store, or dispose of wastes that are removed from temporary exclusion by that rule and are characteristically hazardous under 40 CFR part 261 subpart C will be required to notify either EPA or an authorized state of these activities pursuant to section 3010 of RCRA. Notification instructions are set forth in

45 FR 12746. Persons who previously have notified EPA or an authorized state of their activities pursuant to Section 3010 of RCRA, i.e., persons who previously have notified EPA or an authorized state that they generate, transport, treat, store or dispose of hazardous waste and have received an identification number (see 40 CFR 262.12, 263.11 and 265.1) need not re-notify.² Persons without EPA identification numbers are prohibited from transporting, offering for transport, treating, storing, or disposing of hazardous wastes.

The Agency views the section 3010 notification requirements to be necessary in this case because it believes that many persons that manage the wastes coming into subtitle C regulation today have not previously notified EPA and received an EPA identification number.

B. Definition of Designated Facility

The Agency has received a number of inquiries regarding waste shipments from a state where a waste is subject to hazardous waste regulations to a state where the waste is not yet regulated as hazardous. This situation can arise when EPA lists or identifies a new waste as hazardous under its pre-HSWA authority. In such a case, the waste is subject to RCRA hazardous waste regulations only in those states that do not have interim or final authorization to operate the RCRA program. In a state authorized by EPA to operate a hazardous waste program in lieu of the Federal program under the authority of section 3006 of RCRA, the waste would not be subject to RCRA requirements until the state revises its program to classify the waste as hazardous and receives authorization for these requirements. This set of circumstances results from the fact that RCRA allows states a specified time to adopt new regulations in order to minimize disruptions to the implementation of authorized state

programs. In contrast, this situation does not occur when the wastes are newly listed or identified pursuant to the HSWA authorities since Congress specified that HSWA provisions are to be implemented by EPA in all states until such time as states are authorized to implement the new regulations.

There are two recent EPA rulemakings that listed or identified additional wastes pursuant to pre-HSWA authority: (1) Six Metal Smelting Wastes, 53 FR 35412, September 13, 1988, and (2) Bevill Mining Waste Exclusion final rule 54 FR 36592, September 1, 1989. In addition, today's proposed rule on the 20 conditionally exempt Bevill wastes could lead to a final rule that brings additional wastes into RCRA Subtitle C jurisdiction. These three rulemakings will result in the scenario described above.

Generators of hazardous waste have asked the Agency whether they can ship the waste to a facility in a state where it is not regulated as hazardous and, if so, how they should manifest their waste. EPA's generator regulations require a generator of hazardous waste to "designate on the manifest one facility which is permitted to handle the waste described on the manifest." (See 40 CFR 260.20). The regulations clearly state that the facility designated on the manifest is the "designated facility" as defined in § 260.10. (See the direct reference in the definition of "designated facility" to the manifest requirement in § 262.20.)

A designated facility as currently defined in 40 CFR 260.10 must either (1) have an EPA permit (or interim status) in accordance with Parts 270 and 124, (2) have a permit from a State authorized in accordance with part 271, or (3) be a recycling facility that is regulated under § 261.6(c)(2) or subpart F of part 266, and must also be designated on the manifest by the generator pursuant to § 262.20. It has become apparent that when promulgated in 1980, the definition of "designated facility" did not contemplate the above situation which has potentially broad impacts on the RCRA program. EPA's current interpretation of this manifest

² Under the Solid Waste Disposal Amendments of 1980, (Pub. L. 96-462) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator.

requirement is that the authorized state determines which facilities are allowed to accept the waste. However, since questions on this issue have arisen, the Agency is using this opportunity to seek public comment and, based on these comments, to promulgate clearer regulatory language.

The Agency has decided to propose a clarification of the definition of "designated facility" to alleviate any confusion that the public and the regulated community may have over its applicability. Today's proposal would provide that if a waste is sent to an authorized State where the waste is not considered hazardous, then the designated facility must be a facility allowed, by the State, to accept the waste. This regulatory change would only apply to the situation where a hazardous waste in one state is shipped to a second state that has not yet been authorized to regulate the waste as hazardous. The effect of the proposed rule change would be to clarify the Agency's position that the management standards of the receiving state are the standards applicable to the treatment, storage, or disposal of the waste.

It should be further emphasized that the effect of this new provision would be limited to a temporary period of time following an EPA regulatory action that newly identifies a hazardous waste pursuant to pre-HSWA authority. All authorized states are required to adopt EPA's new waste listings and identifications by specified deadlines (generally one to two years after the applicable "cluster" deadline for state authorization). Once a state has obtained authorization for the new waste listings, all RCRA waste management standards will apply. The phase-in period allowed for state adoption of Federal program changes is a basic premise of pre-HSWA state authorization. Commenters should also be aware that since state programs are allowed to include provisions which go beyond the Federal program, any existing state requirements would continue to be applicable and enforceable by the state during this interim period.

Without a mechanism to allow phasing-in of RCRA standards, new Federal program requirements—particularly new waste listings or identifications—could result in unworkable situations. Generators in unauthorized states may not be able to find a facility that is eligible to take their newly listed or identified wastes. This could occur if there are no facilities within the state that qualified for interim status or received a permit modification

for the new waste. Alternatively, if the generator has an existing arrangement to send its waste to a facility in an authorized state, the receiving facility would have no opportunity to gain interim status until its state adopts the waste stream as hazardous. EPA believes that the phase-in of the RCRA program that has been established for state assumption of the new Federal requirements is essential for a workable national hazardous waste management system.

The Agency solicits comments on this proposed clarification of the definition of "designated facility." In particular, EPA would like to know if generators and waste management facilities have encountered problems with their waste shipments to authorized states as discussed above.

The Agency also solicits comments on alternative approaches to this problem. One option would be to require the receiving facility to be permitted, licensed, registered, or otherwise subject to a prior approval program by a state to manage municipal or industrial solid waste. This would be similar to the existing requirement for small quantity generator waste in § 261.5(g)(3). However, this option may present some of the same drawbacks as the existing "designated facility" definition in that it might not be clear what constitutes an adequate state prior approval scheme.

This proposed clarification will not alter the requirement that a generator offer his waste only to transporters who have EPA identification numbers. (See 40 CFR 262.12(c)). Thus, if a newly listed waste is transferred between transporters in a state where the waste is not yet hazardous, both transporters should be identified on the manifest. The initial transporter would still be required to keep the copy of the manifest on file.

In order to ensure that the waste reaches the designated facility, EPA is proposing to require that the generator arrange that the designated facility owner or operator sign and return the manifest to the generator, and that out-of-state transporters sign and forward the manifest to the designated facility. The return of the manifest to the generator will "close the loop" on the disposition of the generated waste and allow the generator to attempt to resolve any discrepancies in the manifest, as required by 40 CFR 262.42. This new requirement parallels the requirements in 40 CFR 264.71 and 265.71. However, as opposed to those sections, which require the receiving facility to return the manifest, the proposed § 262.23(e) puts the burden on the generator to

ensure the return of the manifest when the waste is sent to a facility in a state not yet authorized to treat the waste as hazardous. EPA believes that this approach is appropriate, since the facility receiving the waste and any out-of-state transporters may not be subject to subtitle C regulation, if they do not otherwise handle any RCRA hazardous wastes. It should be noted that with this approach the designated facility and out-of-state transporters would not be required to obtain EPA identification numbers since the waste is not hazardous in their state. (Of course, once the state becomes authorized to treat the particular waste as hazardous, the facility would need a RCRA subtitle C permit (or interim status) to continue managing the waste and all transporters would need EPA identification numbers.)

The Agency intends to review the comments on today's proposed changes to the "designated facility" definition, and will promulgate a final rule with the associated mining waste final rule. EPA believes that it is important to clarify the existing regulation so that the parties affected by non-HSWA waste identifications and listings know the status of these wastes and the management standards that apply to them if they cross state borders. A minor technical correction is also included in the proposed language of "designated facility" to clarify that an interim status facility in an authorized state may be a designated facility. EPA believes that it is universally understood that these interim status facilities can accept hazardous waste shipments, and this was the original intent of the provision. Therefore, in the first sentence of the proposal a parenthetical clause is added with the words "or interim status".

C. Compliance Dates

1. Interim Status and Permit Modifications in Unauthorized States

Facilities that currently treat, store, or dispose of wastes that have been removed from temporary Bevill exclusion and are characteristically hazardous under 40 CFR part 261, subpart C, but have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, may be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, such facilities must submit a Section 3010 notice pursuant to 40 CFR 270.70(a) within 90 days of publication of the final rule, and must submit a Part A permit application within six months

of publication of the final rule. Under section 3005(e)(3), land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) must also submit a Part B application and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements within 18 months of publication of the final rule. If the facility fails to do so, interim status will terminate on that date.

Completion of final permit application will require individual facilities to develop and compile information on their on-site waste management operations including, but not limited to the following activities: ground-water monitoring (if waste management on land is involved); manifest systems, recordkeeping, and reporting; closure, and possibly, post-closure requirements; and financial responsibility requirements. The permit applications may also require development of engineering plans to upgrade existing facilities. In addition, many of these facilities will, in the future, be subject to land disposal restrictions (LDR) standards. As explained on September 1, EPA considers wastes which would be brought under subtitle C regulation by today's proposal to be "newly identified" wastes for purposes of establishing LDR standards under section 3004(g)(4) of RCRA. (54 FR 36624). Under EPA regulations, LDR standards must require treatment of the affected wastes to a level or by a method that reflects the use of Best Demonstrated Available Technology (BDAT) before the wastes can be disposed on the land. Thus, one future implication of today's proposed rule (and the eventual final rule) will be the ban on land disposal of these wastes unless they are appropriately treated prior to such disposal. EPA will further address LDR standards for non-Bevill mineral processing wastes within the context of the upcoming "Third Third" proposal.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of hazardous wastes covered by today's proposed rule, and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended part A permit application within six months of the publication of the final rule, in accordance with § 270.72(a).

Under current regulations, a hazardous waste management facility that has received a permit pursuant to Section 3005 may not treat, store, or dispose of the wastes removed from

temporary exclusion by today's proposed rule and which are characteristically hazardous under 40 CFR part 261, subpart C when the final rule becomes effective until a permit modification allowing such activity has occurred in accordance with § 270.42. Consequently, owners and operators of such facilities will want to file any necessary applications with EPA well before the effective date of the final rule. EPA has recently amended its permit modification procedures for newly listed or identified wastes. (See 40 CFR 270.42(g).) For more details on the permit modification procedures, see 53 FR 37912, September 28, 1988.

2. Interim Status and Permit Modifications in Authorized States

Until the state is authorized to regulate the wastes excluded from temporary exclusion by today's proposed rule and which are hazardous under 40 CFR part 261, part C, no permit requirements apply and facilities lacking a permit need not seek interim status. Any facility treating, storing, or disposing of these wastes on the effective date of authorization of the state to regulate these wastes under RCRA may qualify for interim status under applicable state law. Note that in order to be no less stringent than the Federal program, the state "in existence" date for determining interim status eligibility may not be later than the effective date of EPA's authorization of the state to regulate these wastes. These facilities must provide the required 3010 notification within 90 days of publication of the final Federal rule as described above and must also provide the state's equivalent of a part A permit application as required by authorized state law.

Finally, RCRA section 3005(e) (interim status) or any authorized state analog will apply to waste management facilities qualifying for state interim status. For those facilities managing wastes under an existing state RCRA permit, state permit modification procedures will apply.

VII. Effect on State Authorizations

This proposed rule will not be effective in RCRA authorized states until the state program amendments are effective, because its requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, this removal from temporary exclusion will be applicable six months after publication of the final rule only in those few states that do not have final authorization to operate their own hazardous waste programs in lieu of the Federal program.

In authorized states, the reinterpretation of the regulation of non-excluded processing wastes will not be applicable until the state revises its program to adopt equivalent requirements under state law and receives authorization for these new requirements. (Of course, the requirements will be applicable as state law if the state law is effective prior to authorization).

Assuming that EPA makes final the scope of the Bevill exclusion by January 15, 1990, as planned, states that have final authorization would be required (40 CFR 271.21(e)) to revise their programs to adopt equivalent standards regulating non-Bevill mineral processing wastes that exhibit hazardous characteristics as hazardous by July 1, 1991 if only regulatory changes are necessary, or by July 1, 1992 if statutory changes are necessary. These deadlines can be extended by up to six months (i.e., until January 1, 1992 and January 1, 1993, respectively) in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the state requirements become RCRA Subtitle C requirements in that state. States are not authorized to regulate any wastes subject to today's proposal until EPA approves their regulations. Of course, states with existing standards that address these wastes may continue to administer and enforce their regulations as a matter of state law.

Currently unauthorized states that submit an official application for final authorization less than 12 months after the effective date of the final rule may be approved without including an equivalent provision (i.e., to address non-Bevill mineral processing wastes) in the application. However, once authorized, a state must revise its program to include an equivalent provision according to the requirements and deadlines provided at 40 CFR 271.21(e).

VIII. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. A major rule is defined as a regulation that is likely to result in one or more of the following impacts:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

When final, today's proposed rule will complete the Agency's revised interpretation of the Bevill Mining Waste Exclusion for mineral processing wastes, previously proposed under Court-ordered deadline on April 17, 1989 (54 FR 15345). The first part of this reinterpretation, dealing with the vast majority of individual small volume waste streams, was made final on September 1, 1989. The preamble to the September rule presented the results of the Agency's economic impact screening analysis, covering scores of small volume mineral processing wastes, and examining cost impacts associated with 39 potentially hazardous small volume wastes in detail. This analysis indicated a total annual compliance cost for subtitle C waste management of about \$54 million. As indicated in Section V of this preamble, today's proposed rule would remove seven additional processing wastes from the Bevill exclusion and subject them to coverage under existing subtitle C regulations if they exhibit hazardous characteristics.

Consistent with Executive Order 12291, the Agency has completed a preliminary economic impact screening analysis for the seven mineral processing wastes proposed for removal from the Bevill exclusion in today's proposed rule. Results of this analysis suggest that five of the seven waste streams are likely to exhibit hazardous characteristics at some or all of the facilities that generate them, and that nine minerals processing facilities in five different commodity sectors are likely to incur compliance costs if the Bevill status of these wastes is permanently removed. The Agency estimates that total annual compliance costs will be on the order of \$5 million, and would thus not indicate that today's proposal is a "major rule" according to the first criterion of E.O. 12291.

In addition, for reasons set out below, EPA does not predict a substantial increase in costs or prices for consumers or a significant effect on international trade or employment in connection with today's proposal. One or two individual mineral processing facilities may experience moderate compliance costs which could affect their ability to compete in their respective commodity sectors. On balance, the Agency does not believe that today's proposed rule

constitutes a major rule as defined by E.O. 12291.

The following paragraphs of this section present the Agency's economic impact screening approach, assumptions, and results in more detail.

A. Approach

The Agency's screening analysis was based on a modification of the procedure used to develop the cost and economic impacts of the September 1, 1989 final rule, details of which are provided in the technical background document for that rule.³ The major differences between the two analyses are that in this instance, EPA conducted facility-specific, rather than sector-wide analyses, and used newly available waste characteristics, generation, and management data collected through the Agency's recent sampling effort and industry survey. These new data allowed EPA to characterize waste streams and current and prospective management trains much more accurately for the seven wastes studied for today's proposed rule.

Because many of these site-specific data have been designated Confidential Business Information (CBI) by company respondents, EPA has not provided information in this preamble or in the supporting technical background document⁴ on facility-specific waste generation rates or management practice assumptions, in order to prevent unauthorized release of company-specific information. For presentation purposes, however, the Agency has developed proxies for some of the confidential information (e.g., commodity production rates) from published sources,⁵ and has used and reported this information in the analysis presented below.

Waste characteristics for the seven wastes were ascribed based on EPA waste sampling data. In contrast to the criteria and test procedures used to determine whether the wastes are "low hazard" for purposes of today's proposal, the approach used here employed EP toxicity test results and standard hazardous waste characteristic tests (e.g., corrosivity limits of pH between 2.0 and 12.5), because these are the tests and regulatory levels that will

be used to determine whether wastes will be regulated under Subtitle C after removal from the Bevill exclusion. Although wastes were not sampled at every facility generating each waste type, EPA used the conservation assumption that if a waste type exhibited one or more hazardous characteristics at one sample facility, then it would exhibit the same characteristics (i.e., pass or fail) at all facilities generating the same waste, *unless* there was specific sampling evidence to the contrary. Therefore, EPA may have overestimated costs and impacts for some facilities and sectors for which sampling was not comprehensive for all facilities.

Of the seven waste streams reviewed, the preliminary screening assessment suggests that two—process wastewater from coal gasification and sulfate process waste solids from titanium dioxide production—are not likely to test hazardous under current characteristic test procedures. Accordingly, EPA has assumed in the economic screening analysis that the facilities generating these two wastes will experience no compliance cost impacts associated with potential subtitle C regulation of these wastes. The remaining five waste streams were considered hazardous at all facilities, for the characteristics specified, as follows:

- Chromite roast/leach ore residue—EP toxic for chromium.
- Element phosphorus off-gas solids (from wet collection)—EP toxic for cadmium.
- Hydrofluoric acid process wastewater—Corrosive.
- Primary lead process wastewater—EP toxic for arsenic, cadmium, and lead, corrosive.
- Titanium dioxide sulfate process waste acids—EP toxic for chromium, corrosive.

These commodity sectors and wastes were then further analyzed in terms of current (baseline) management practices.

As in the previous screening analysis for the September rule, the Agency developed baseline and subtitle C treatment scenarios for the wastes to be withdrawn from the Bevill exclusion and estimated the incremental costs incurred by each sector in treating the wastes as hazardous under RCRA. In contrast to the previous analysis, however, EPA simulated costs for baseline management practices on a site-specific basis using the actual data provided for each of the 13 potentially affected facilities in the five sectors studied. Subtitle C management practices were developed as before, using knowledge of

³ USEPA, Technical Background Document: Development of the Cost, Economic, and Small Business Impacts Arising from the Reinterpretation of the Bevill Exclusion for Mineral Processing Wastes, August 18, 1989.

⁴ USEPA, Technical Background Document: Development of the Cost and Economic Impacts of Implementing the Bevill Mining Waste Exclusion Criteria, September 15, 1989.

⁵ 1988 Directory of Chemical Producers (SRI International), Chemical Marketing Reporter.

subtitle C requirements and best engineering judgment.

EPA determined that five of the 13 facilities analyzed on the basis of company-provided data are currently managing hazardous wastes in compliance with current subtitle C requirements, and thus might not incur additional costs if this rule is promulgated in its present form. For example, if an affected facility already has one or more appropriate waste management units with approved subtitle C permits and sufficient capacity to manage a newly non-Bevill characteristic waste, then the regulatory compliance costs associated with removing the waste from the Bevill exclusion would be a small fraction of what they would be otherwise, and would consist primarily of incremental operating and maintenance (as opposed to capital construction and closure) costs. The data used to establish these baseline waste management assumptions were obtained from responses to EPA's 1987-88 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey). The methods used to organize and manipulate these data are described in a technical background document to the September 1 final rule.⁶

Other information sources also indicate that compliance costs associated with this rule will be lower than would be predicted using standard waste management assumptions. Data from the National Survey of Solid Wastes from Mineral Processing Facilities indicate that current practice for managing many of the wastes (particularly the wastewaters) proposed

for removal in today's NPRM includes treatment in a wastewater treatment plant, direct discharge via NPDES permit provisions, and/or recycling to the process generating the waste in question. EPA has reviewed this information, and used it to develop baseline and subtitle C compliance scenarios for this analysis. As a result, estimated compliance costs at several of the facilities affected by today's proposal are zero, i.e., removal of the waste from Bevill will impose no operational or economic impacts.

B. Aggregate and Sector Compliance Costs

The impact screening analysis projects that nine facilities in five different mineral processing commodity sectors will be affected directly by today's proposed rule. Another four facilities, one each in the chromite and titanium dioxide sectors, and two in the lead sector, are believed to be unaffected by virtue of already incorporating Subtitle C (or equivalent NPDES wastewater treatment) practices in their current waste management systems. In aggregate, the total impact of today's rule is estimated to be about \$5.2 million per year.

EPA cost estimates for individual facilities are presented by sector in Table 4. Two sectors, titanium dioxide and chromite, are expected to experience aggregate sector impacts in excess of \$1 million annually. Within each of these two sectors, all of the cost impacts are predicted to fall on one of the two facilities, with the other producer's waste management costs being unaffected by removal from the Bevill exclusion. The hydrofluoric acid manufacturers (Allied Signal and Pennwalt) would experience cost increases of about \$500,000 and \$200,000, respectively. The primary lead producers, Asarco and Doe Run, would

experience compliance cost impacts of \$41,000 and \$235,000, respectively. Estimated cost impacts for individual primary lead facilities range from zero to \$201,000 annually, depending on current management practices and plant-specific waste characteristics. The two (of five) elemental phosphorus plants that are expected to experience impacts have total estimated incremental costs of \$179,000 annually, with the vast majority (\$173,000) imposed on the facility owned by Occidental Chemical Corporation.

At four facilities, estimated compliance costs are zero, i.e., removal of the facility's candidate special waste from the Bevill exclusion will impose no cost or economic impacts. This is primarily due to the current management practices being employed at these four facilities. The unaffected TiO₂ facility (Kemira) is a fully permitted RCRA subtitle C management facility; examination of data from EPA's TSDR survey reveals that the permits and waste management units necessary to handle the newly non-Bevill waste as a regulated hazardous waste are already in place. At the unaffected chromite facility (American Chrome and Chemical), EPA survey and sampling data indicate that the waste goes directly to a wastewater treatment system (exempt from subtitle C), which renders the waste material (both solids and effluent) non-hazardous. Therefore, the facility can continue to manage the waste under current practice, irrespective of Bevill status. Similar considerations indicate that two of Asarco's primary lead facilities (Omaha and Glover) would also be unaffected by today's proposed rule (waste generation and management data have been designated CBI by Asarco).

⁶ USEPA. 1989. *Development of the High Volume Criterion for Mineral Processing Wastes*. Special Wastes Branch, Office of Solid Waste. August 18, 1989.

TABLE 4.—SUMMARY OF PRODUCTION, VALUE OF SHIPMENTS, AND COMPLIANCE COSTS

Commodity sector	Number of plants producing commodity	Production ¹ (mt/yr)	Unit value (\$/mt)	Value of shipments (\$yr)	Compliance costs (\$yr)
Chromite (2)					
Entire Sector.....	2	150,000	1,416	212,401,306	2,274,000
Facilities Evaluated.....	1	150,000	1,416	212,401,306	2,274,000
American Chrome—Corpus Christi TX.....		41,000	1,416	58,056,357	0
Occidental—Castle Hayne NC.....		109,000	1,416	154,344,949	2,274,000
Elemental phosphorus					
Entire Sector.....	5	341,950	1,688	577,266,155	179,000
Facilities Evaluated.....	2	174,150	1,688	293,992,312	179,000
FMC—Pocatello ID.....		122,449	1,688	206,713,335	6,000
Occidental—Columbia TN.....		51,701	1,688	87,278,968	173,000
Hydrofluoric Acid					
Entire Sector.....	3	235,374	1,273	299,642,952	678,000
Facilities Evaluated (3).....	2	110,204	1,273	140,295,255	678,000

TABLE 4.—SUMMARY OF PRODUCTION, VALUE OF SHIPMENTS, AND COMPLIANCE COSTS—Continued

Commodity sector	Number of plants producing commodity	Production ¹ (mt/yr)	Unit value (\$/mt)	Value of shipments (\$yr)	Compliance costs (\$yr)
Allied—Geismar LA.....		66,168	1,273	109,695,878	490,000
Pennwalt-Calvert City KY.....		24,036	1,273	30,599,377	188,000
Lead					
Entire Sector.....	5	374,633	724	271,162,781	276,000
Facilities Evaluated.....	3	374,633	724	271,162,781	276,000
Asarco—East Helena MT (4).....		52,189	724	37,775,036	41,000
Asarco—Glover MO (4).....		52,189	724	37,775,036	0
Asarco—Omaha NE (4).....		52,189	724	37,775,036	0
Doe Run—Buick MO.....		92,762	724	67,141,706	34,000
Doe Run—Herculeum MO.....		125,304	724	90,695,969	201,000
Titanium dioxide					
Entire Sector.....	9	893,878	1,891	1,690,482,634	1,817,000
Facilities Evaluated.....	1	114,286	1,891	216,134,766	1,817,000
Kemira Oy—Savannah GA (5).....		54,422	1,891	102,921,317	0
SCM—Baltimore MD (5).....		59,864	1,891	113,213,449	1,817,000
Combined total—all five sectors					
Entire Sector.....	24	1,995,834	1,529	3,050,955,829	5,224,000
Facilities Evaluated.....	9	923,272	1,228	1,133,986,421	5,224,000

1. 100 percent capacity utilization is assumed.

2. Data are for sodium chromate and sodium bichromate.

3. DuPont's La Porte, TX, plant produces HF acid but is not included in the analysis because DuPont claims that the facility does not generate any solid wastes subject to this rulemaking, i.e., that its fluorogypsum and process wastewater are not solid wastes. EPA has not fully evaluated this claim but as, for this analysis, assumed that the DuPont facility not experience impacts from this rule.

4. Capacity and production values apportioned equally between the three Asarco facilities.

5. Sulfate process.

C. Economic Impacts

EPA's screening-level analysis of economic impact compared the magnitude of compliance costs for each affected facility to the estimated value of shipments. This ratio provides a first approximation of the extent to which the profitability of firms, or, alternatively, commodity prices, or other measures of national impact may be adversely affected by the imposition of regulatory compliance costs.

1. Impacts on Commodity Sectors

Economic impacts, expressed as the ratio of annual compliance costs to annual value of shipments, are displayed in Table 5. Sectors or facilities with ratios above one percent were considered vulnerable to moderate to significant financial impacts and were evaluated in more detail in terms of market and industry factors that might affect the ultimate incidence and impact of the costs.

As seen in Table 5, only two facilities (one each in the titanium dioxide (sulfate) and sodium chromate/bichromate sectors) are predicted to experience impacts above the one percent level, both at around 1.5 percent. This level of impact is regarded as

moderate. The two elemental phosphorus (FMC and Occidental), primary lead (Asarco and Doe Run), and hydrofluoric acid producers (Allied-Signal and Pennwalt) examined in this study are expected to experience only minor economic impacts. Obviously, firms and facilities already in compliance and with compliance costs of zero (i.e., Kemira, American Chrome and Chemical, and Asarco) will not experience any economic impacts associated with this rule.

To further explore the economic impact of today's proposal, EPA has examined some of the factors that affect the ability of affected firms to pass through prospective compliance costs to product consumers in the form of higher prices. These factors include absolute price levels, major end users of the mineral commodity, competition from imports and substitutes, secondary production, and flexibility in other production cost factors. These are discussed for each of the two affected sectors in the paragraphs below.

a. Titanium dioxide. Titanium dioxide is used in pigments for paints and surface coatings, paper manufacturing, and plastics. Half of titanium dioxide production is consumed in pigments, where its competitive position is strong.

Demand for high-quality paper also favors titanium dioxide.

The domestic industry supplies most of the titanium dioxide used in the U.S., with imports exceeding exports by only a moderate degree. As a result, titanium dioxide is in a relatively strong market position. Producers using the sulfate process, however, are in a minority and account for only one eighth of domestic production. It is not likely that the one affected producer could establish a premium for its product and would therefore be limited in the extent to which it could recover cost increases.

b. Sodium chromate and bichromate. Sodium chromate and bichromate are used in a number of applications, including chrome pigments for paints. Derivative chrome pigments have excellent performance characteristics and have experienced gains in certain applications, such as traffic paints and automotive coatings. The U.S. is a net exporter of sodium chromate and bichromate.

Given the low level of import competition and the small number of producers in the domestic industry, the one affected producer is apt to have a reasonably good prospect of recovering production cost increases.

TABLE 5—COMPLIANCE COSTS AT POTENTIALLY AFFECTED FACILITIES

Commodity sector	Plant	Compliance costs (\$)	Costs per metric ton of product (\$/MT)	Costs/value of shipments (%)
Chromite.....	Amer. Chrome & Chem.-Corpus Christi, TX.....	0	0	0.0
	Occidental—Castle Hayne, NC.....	2,274,000	21	1.5
	Total—Chromite (1).....	2,274,000	15	1.1
Elemental Phosphorus.....	FMC—Pocatello ID.....	6,000	<1	<0.1
	Occidental—Columbia TN.....	173,000	3	0.2
	Total—Elemental Phosphorus (1).....	179,000	1	<0.1
Hydrofluoric Acid.....	Allied—Geismar, LA.....	490,000	6	0.4
	Pennwalt—Calvert City, KY.....	188,000	8	0.6
	Total—Hydrofluoric Acid (1).....	678,000	6	0.5
Lead.....	Asarco—East Helena, MT.....	41,000	1	0.1
	Asarco—Glover, MO.....	0	0	0.0
	Asarco—Omaha, NE.....	0	0	0.0
	Doe Run—Buick, MO.....	34,000	0	0.1
	Doe Run—Herculaneum, MO.....	201,000	2	0.2
	Total—Lead (1).....	276,000	2	0.1
Titanium Dioxide.....	Kemira Oy—Savannah, GA (2).....	0	0	0.0
	SCM—Baltimore, MD (2).....	1,187,000	30	1.6
	Total—Titanium Dioxide (1).....	1,817,000	16	0.8
Combined Total—All Five Sectors.....	All Facilities (1).....	5,224,000	3	0.2
	Facilities Affected by the Rule.....	5,224,000	6	0.5

1. Includes only facilities generating the waste proposed for removal from the Bevill exclusion.
2. Sulfate process.

2. Effects on Consumer Prices

For several reasons, EPA believes that this rule will not create any appreciable changes in consumer prices. The first and principal reason is the low overall percentage effect of compliance costs relative to product value, which does not exceed 1.5 percent for any affected commodity. Combined with this is the fact that not all producers in these sectors are affected equally (many domestic competitors are not affected at all) and that other domestic or foreign competitors could fill production shortfalls, either with identical or substitutable products. Finally, since all the affected commodities are primary intermediate inputs to the production of other finished products, their contribution to final consumer goods

prices is, in any case, typically quite small.

3. Foreign Trade Impacts

Trade is substantial in the mineral commodities addressed in this study. Basic import and export data for the sectors that generate potentially hazardous wastes are presented in Table 6. Export markets are significant for the commodities that EPA has identified as having moderate compliance cost impacts (i.e., cost/value of shipments of one percent or more), and these markets may be adversely affected by the predicted economic impacts of compliance. Because imports of titanium dioxide are significant, the ability of the affected domestic producer to raise prices to recover compliance costs is, as discussed above, somewhat limited.

Using the import and export figures in Table 6 as one indicator of potential impacts, the international trade situation facing the firms in the commodity sectors that will experience cost impacts above the one percent level can be summarized as follows:

- The one affected titanium dioxide producer will have difficulty in passing through compliance costs
- The sodium chromate and bichromate producer should not have difficulty in passing through compliance costs

In view of the above, it is unlikely that the overall trade balance in the domestic minerals industry will be significantly affected by today's rule, though in one sector regulatory cost impacts may increase already positive net imports to a small degree.

TABLE 6.—IMPORTS AND EXPORTS OF MINERALS, 1987

Commodity sector	Commodity form(s)	Domestic production		Imports		Exports	
		Quantity (mt)	Value (\$000)	Quantity (mt)	Value (\$000)	Quantity (mt)	Value (\$000)
Chromite (1).....		150,000	212,401	4,754	3,173	15,017	181,107
Elemental Phosphorus.....		341,950	577,266	4,463	6,609	20,302	30,796
Lead.....	Pigs and bars (content) (2).....	374,633	271,163	185,673	123,157	10,116	11,945
Hydrofluoric Acid.....		235,374	299,643	103,127	95,211	n/a	n/a
Titanium Dioxide.....	Titanium Dioxide Pigments (content).....	893,878	1,690,483	162,739	236,945	99,731	181,707

Source: Bureau of Mines, Minerals Yearbook 1987. pp. 61, 64, 221, 223, 377, 684, 889, 893, and 894.

1. Sodium chromate and sodium bichromate.

2. Exports include cathodes and sheets.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), which amends

the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in

Section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation.

If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

In the preamble to the September final rule, the Agency presented a description of and the results from a comprehensive screening analysis to determine the potential for significant small business impacts imposed by the reinterpretation of the Mining Waste Exclusion. The analysis conducted for today's proposal was conducted using identical procedures. These are outlined very briefly below and are described more fully in the technical background document to the September final rule.

The Agency has concluded that today's proposed rule will not have a significant adverse impact on a substantial number of small mineral processing companies, because there are no small businesses in the sectors that are expected to experience impacts from today's proposed rule.

A. Definition of Affected Small Entities

Today's proposal would impose impacts only on the facilities in the five commodity sectors that generate wastes that would be removed from the Bevill exclusion and that could fail any of the

Agency's tests for hazardous waste characteristics. Based upon the information contained in the responses to the industry survey and EPA waste sampling results, the five mineral commodity sectors and nine facilities most likely to face subtitle C compliance costs have been identified in section VIII of this preamble.

For purposes of defining "small business" firms, EPA has again relied on the standard definitions of the Small Business Administration (SBA) as published at 13 CFR ch. 1, part 121. For the industries in question, SBA employs a basic employment-based definition, with the small business cut-off value for total company employment ranging between 500 and 1,000 employees, depending upon the specific industry in question.

For the affected mineral processing facilities identified above in section VIII, EPA conducted a comprehensive RFA business ownership screening analysis for those mineral commodity sectors estimated to incur economic impacts associated with today's proposed rule. All potentially affected plants and businesses were examined individually.

Facility location and ownership information was obtained as in the previous analysis in support of the September 1 final rule (see 54 FR 36592). Data on the employment size of affected firms were obtained from published sources (e.g., Standard & Poors, Dun & Bradstreet). The Agency then compared reported company employment to the Small Business Administration's (SBA's) definition of a small business for each sector's SIC code to determine the number of small businesses, if any, in that sector. SBA defines small businesses as less than 1000 employees or less than 750 employees for most of the SIC codes.

B. Results

As shown in table 7, EPA believes that all of the firms that might be affected by today's proposal are large businesses, according to the SBA's company size criterion. Accordingly, the Agency concludes that there will not be a significant (or, in fact, any) adverse impact on a substantial number of small mineral processing companies as a result of this rulemaking.

TABLE 7.—EMPLOYMENT ESTIMATES FOR POTENTIALLY AFFECTED MINERAL PROCESSING BUSINESS

Commodity sector	Facility name	Facility location	Owner name	Owner location	No. of employees	Source of info.
Chromite	Am. Chrm. & Chem.	Corpus Christi, TX	Harrison's Trading Co.	Bronxville, NY	1,200	DCA.
	Occidental	Castle Hayne, NC	Occidental Petroleum	Los Angeles, CA	51,000	S&P.
Elemental Phosphorus	FMC	Pocatello, ID	FMC Corp.	Chicago, IL	24,797	S&P.
	Occidental	Columbia, TN	Occidental Petroleum	Los Angeles, CA	51,000	S&P.
Hydrofluoric Acid	Allied-Signal	Geismar, LA	Allied-Signal	Morristown, NJ	144,000	S&P.
	Pennwalt	Calvert City, KY	Pennwalt	Philadelphia, PA	9,000	S&P.
Lead	Doe Run	Boss, MO	St. Joe Minerals ²	Clayton, MO	9,000	S&P.
	Doe Run	Herculanum, MO	St. Joe Minerals ²	Clayton, MO	9,000	S&P.
	Asarco	Omaha, NE	Asarco	New York, NY	7,600	S&P.
	Asarco	East Helena, MT	Asarco	New York, NY	7,600	S&P.
	Asarco	Glover, MO	Asarco	New York, NY	7,600	S&P.
Titanium Dioxide	SCM	Baltimore, MD	Hanson Industries	Iselin, NJ	33,000	S&P.
	Kemira	Savannah, GA	Kemira Oy	Helsinki, Finland	7,200	D&B.

¹ Employment estimate is based on total employment for all subsidiaries held by Harrison's Trading Co.

² Doe Run is a general partnership of Homestake Mining Co. and St. Joe Minerals Corp., a wholly owned subsidiary of Fluor Corp.

Sources: S&P: Standard and Poor's Corporation, "Standard and Poor's Corporation Records," (New York, New York: 1988). DCA: National Register Publishing Company, "Directory of Corporate Affiliations," (Wilmette, IL: 1988). D&B: Dun & Bradstreet International Market Identifiers.

List of Subjects in 40 CFR 260, 261, and 262

Designated facility, Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements, Manifests.

Dated: September 15, 1989.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by revising the definition "designated facility" to read as follows:

§ 260.10 Definitions.

* * * * *

"Designated facility" means a hazardous waste treatment, storage, or

disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter, or (3) is regulated under § 261.6(c)(2) or subpart F of part 266 of this chapter, and (4) that has been designated on the manifest by the generator pursuant to § 260.20. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the

designated facility must be a facility allowed by the receiving State to accept such waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

4. Section 261.4, paragraph (b)(7), is revised to read as follows:

§ 261.4 Exclusions.

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For purposes of this paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining to remove water and/or carbon dioxide, roasting in preparation for leaching (except where the roasting/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing), gravity concentration, magnetic separation, electrostatic

separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and heap, dump, vat, tank, and *in situ* leaching. For the purposes of this paragraph, solid waste from the processing of ores and minerals includes only:

- (i) Slag from primary copper processing;
- (ii) Slag from primary lead processing;
- (iii) Red and brown muds from bauxite refining;
- (iv) Phosphogypsum from phosphoric acid production;
- (v) Slag from elemental phosphorus production;
- (vi) Gasifier ash from coal gasification;
- (vii) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
- (viii) Slag tailings from primary copper processing;
- (ix) Fluorogypsum from hydrofluoric acid production;
- (x) Air pollution control dust/sludge from iron blast furnaces;
- (xi) Iron blast furnace slag;
- (xii) Air pollution control dust/sludge from lightweight aggregate production;
- (xiii) Process wastewater from primary magnesium processing by the anhydrous process;
- (xiv) Process wastewater from phosphoric acid production;
- (xv) Basic oxygen furnace and open hearth furnace air pollution control

dust/sludge from carbon steel production;

(xvi) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(xvii) Chloride process waste solids from titanium tetrachloride production;

(xviii) Slag from primary zinc processing.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

5. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

6. Section 262.23 is amended by adding paragraph (e) to read as follows:

§ 262.23 Use of the manifest.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

[FR Doc. 89-22419 Filed 9-22-89; 8:45 am]

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Registered Teacher

Monday
September 25, 1989

Part V

Department of Education

Arbitration Panel Decision Under The Randolph-Sheppard Act; Notice

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services****Arbitration Panel Decision Under the Randolph-Sheppard Act****AGENCY:** Department of Education.**ACTION:** Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on October 23, 1988, an arbitration panel rendered a decision in the matter of Melvin Barrineau, vendor, v. the State of South Carolina, South Carolina Commission for the Blind, State Licensing Agency (Docket No. R-S/87-10). This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner Melvin Barrineau on April 11, 1987.

Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Randolph-Sheppard Act may request a full evidentiary hearing from the State Licensing Agency. If the licensee is dissatisfied with the State Agency's decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT:

George F. Arnsow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street, SW., Washington, DC 20202-2738, Area Code (202) 732-1317 or TTY (202) 732-1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: September 19, 1989.

Dr. Robert R. Davila,

Assistant Secretary for Special Education and Rehabilitative Services.

**Synopsis of Arbitration Panel Decision
Procedural History**

Melvin Barrineau, the Grievant, is a blind vendor licensed by the respondent, the South Carolina Commission for the Blind ("the Commission") pursuant to the Randolph-Sheppard Act at 20 U.S.C. 107 *et seq.* The Commission awarded Barrineau an Interstate 26 location for a roadside vending operation based on his May 13, 1986 bid. The interstate highway vending program is operated under the auspices of both the

Randolph-Sheppard Act and the Surface Transportation Assistance Act, 23 U.S.C. 111(b). The latter statute requires States to give priority in operating the vending machines to the Randolph-Sheppard State Licensing Agency. At the time of the award, the Commission informed Barrineau that he was required to abide by the exclusive buying system for the purchase of cola beverages. The Commission annually contracted with the lowest bidding beverage company to be the sole supplier of cola drinks to the roadside vendors.

Until November 1986, Coca-Cola was the contracted supplier. At that time, Barrineau and other roadside vendors were informed that Pepsi-Cola had submitted the lowest bid and all vendors would be required to exclusively sell the Pepsi-Cola brand of cola beverages.

Barrineau complied with the change, but objected to it. He maintained that the disruption of his business due to the change of supplier and customer interest in a wider selection of products caused him to lose sales. He also contended that, while he was aware of the exclusive buying arrangement at the time of his agreement, he was unaware of the binding nature of it.

Upon the discovery that distributors were willing to supply his stand on a non-exclusive basis, he requested permission from the Commission to sell more than one product. The Commission refused his request for the following reasons. First, granting Barrineau's request would result in a violation of the Commission's contract to buy cola from the lowest bidder as the exclusive supplier during the life of the contract. Second, higher profits were realized by all roadside vendors and some non-roadside vendors as the result of lower prices for vendors from the exclusive supplier. Third, as a roadside vendor, Barrineau was aware of the exclusive buying system and had agreed to abide by the rules of the Commission, but was trying to break his contract with the Commission and, in doing so, was jeopardizing the Commission's contract with the beverage supplier. Finally, the Commission argued that it was authorized by law and pertinent Federal and State vending facility regulations to make the challenged decisions in carrying out the program.

Barrineau reiterated his position in a formal grievance of the Commission's decision filed pursuant to 20 U.S.C. 107d-1(a). He sought damages for losses incurred and claimed disparate treatment of vendors in violation of the uniformity of treatment provisions of the Randolph-Sheppard Act. Barrineau based his disparate treatment claim on

the fact that non-roadside vendors were not included in the exclusive buying arrangement and usually paid more for cola than roadside vendors.

After a full evidentiary hearing conducted on January 9, 1987, Barrineau's complaint was dismissed on March 11, 1987.

Arbitration Panel Decision

The Secretary of Education convened a panel upon receipt of Barrineau's complaint filed April 11, 1987, and hearings were held before the panel on May 24 and 25, 1988. The panel consisted of one member selected by Barrineau, one member selected by the Commission, and a Chairman jointly chosen by these two members. The State Committee of Blind Vendors, established under 20 U.S.C. 107b-1, filed an *amicus* brief with the panel in support of the Commission, stating its fear of financial loss if the exclusive buying system were altered. The Committee included 24 of the 30 roadside vendors and 39 of the 76 non-roadside vendors in the State's program.

The panel found that the South Carolina Commission for the Blind had the authority to enter into an exclusive buying agreement under the Randolph-Sheppard Act and implementing Federal and State regulations. Although the panel noted that the Commission may be unnecessarily inflexible in its treatment of the blind vendors, the evidence in this case reflected lowered beverage prices for roadside and some non-roadside vendors as a result of the exclusive buying agreement. The Commission had no financial stake in such an agreement. In spite of the confusion over Barrineau's awareness of the permanence of the agreement, the panel concluded that the Commission had the authority to maintain the exclusive agreement.

The panel recognized the costs and inconveniences involved in the changeover of cola suppliers and the potential for customer dissatisfaction. However, the evidence supported the fact that Barrineau, as well as other State-licensed vendors, benefitted by considerable reductions in cost as a result of the exclusive buying agreement. Therefore, the panel found that Barrineau was not damaged financially by the exclusive agreement.

The panel found no merit in Barrineau's claim of disparate treatment due to the exclusion of non-roadside vendors from the bidding procedure. The difference in the business operations of roadside vendors and non-roadside vendors was established at the hearing. The panel concluded that this

dissimilarity made identical treatment of the different groups impractical. Rather, the panel stressed that all roadside vendors were being treated equally with respect to cola supplies and such treatment was the main issue in contention.

On this basis, the panel stated that Barrineau could choose to abide by the Commission's rules, work for a change through the vendors' committee, or leave the State's vending facility program. The panel denied his grievance.

The panel member chosen by the South Carolina Commission for the

Blind concurred in the final decision but wrote a separate opinion concluding that Barrineau had a contract with the Commission obligating him to abide by the rules and regulations the Commission imposed for the vending facility program.

The panel member chosen by Barrineau issued a dissenting opinion. Noting that one of the aims of the Randolph-Sheppard Act is to help program participants become as self-sustaining as possible, he concluded that Barrineau was subjected to discriminatory treatment by the

Commission, should be released from any future applications of the exclusive supplier rule, and that the State should be ordered to pay him \$1,618.00 in compensatory damages and legal costs incurred in the course of the full evidentiary hearing.

The decision of the panel and the panel members' written opinions do not necessarily represent the views and opinions of the Department of Education.

[FR Doc. 89-22476 Filed 9-22-89; 8:45 am]

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Federal Register

Monday
September 25, 1989

Part VI

Department of Transportation

Research and Special Programs
Administration

49 CFR Parts 171 and 173
Standards for Construction of Fireworks
and Novelties; Approval for
Transportation; Final Rule

DEPARTMENT OF TRANSPORTATION**Research and Special Programs
Administration****49 CFR Parts 171 and 173**[Docket No. HM-202; Amdt. Nos. 171-106,
173-218]

RIN 2137-AB36

**Standards for Construction of
Fireworks and Novelties; Approval for
Transportation****AGENCY:** Research and Special Programs
Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: RSPA is revising the requirements in the Hazardous Materials Regulations (HMR) pertaining to the approval of Class B and C fireworks and Class C novelties (a novelty being a device which produces limited visible or audible effects; e.g., toy smoke devices, trick noisemakers). This rule provides an exception from a requirement for the examination of certain fireworks and novelties by the Bureau of Explosives (BOE) or the Bureau of Mines (BOM) prior to their approval for transportation by the Director, Office of Hazardous Materials Transportation (OHMT). In order to qualify for this exception, the devices must be constructed from specific chemicals known to be thermally stable in full conformance with the American Pyrotechnics Association, Inc. (APA) Standard 87-1, and must have satisfactorily passed a thermal stability test performed by the manufacturer or a testing laboratory, such as the BOE or BOM.

The intended effect of this action is to expedite the DOT approval process for the fireworks and novelties, and reduce the cost of processing applications for approval and paperwork. Information collection and recordkeeping requirements contained in § 173.86 herein have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 and assigned the control number OMB No 2137-0557.

EFFECTIVE DATE: November 24, 1989. However, immediate compliance with the regulations, as amended herein, is authorized.

The incorporation by reference of the publication listed in this amendment is approved by the Director of the Federal Register as of September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Charles W. Schultz, Technical Division, (202) 366-4545; or Jacquelyn F. Smith, Standards Division, (202) 366-4488,

Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On February 12, 1988, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register under Docket HM-202, Notice 88-1 (53 FR 4348) to simplify the procedures for obtaining approval of new fireworks and novelties for transportation. The DOT regulations presently require that all fireworks be examined by the Bureau of Explosives (BOE) or other laboratory acceptable to DOT for the proposed classification. The laboratory reports must then be submitted to DOT for approval and assignment of an EX number. In many cases, firework manufacturers have had to wait for several weeks for their laboratory reports due to a heavy backlog of samples at the BOE. Under procedures adopted in this final rule, paperwork burdens and time delays would be reduced, in most cases, because information required to classify an item would be submitted directly to RSPA.

Within the past five years, RSPA has classed and approved over 5,000 fireworks and novelties, a number of which were identical or similar in chemical composition and construction. Requiring that these standard devices be repeatedly submitted for examination is costly and time-consuming for the fireworks industry. Based on the number of samples examined in past years, estimated savings to the fireworks industry would amount to over \$133,000 annually. Furthermore, such examinations offer little or no additional safety benefits to the public. The chemical mixtures that are involved have been in use for more than 50 years and their safety and stability are well known. A laboratory examination is still required for potentially-unstable or new compositions. RSPA believes that this procedure will provide an equivalent level of safety for classifying and approving fireworks and novelties while significantly expediting the DOT approval process for fireworks and novelties, reducing paperwork and costs in processing applications for approval, and providing clarification and better compliance of the regulations through an acceptable industry consensus standard.

As discussed in the NPRM, unless otherwise required by the Director, OHMT, a person who produces a new firework or novelty device in full conformance with APA Standard 87-1 need not submit those devices to the BOE or the BOM for examination. To obtain approval of a device, a manufacturer would submit a written

application to the Director, OHMT, containing the information outlined in the APA Standard. This information would include a detailed description of the device, including shape, size, and a diagram showing location of all components; the chemical composition, including a list of formulas; and the results of the thermal stability test for each device or component. Each application would contain copies of all relevant data and drawings required for processing the approval request. If the Director, OHMT, determines that an application contains adequate justification to class the device for transportation, the applicant will be sent a letter containing the EX-number assigned to the approved device. At his discretion, the Director, OHMT, may require that a device be examined by the BOE or BOM. The NPRM also contained a proposal to require that the EX-numbers assigned to the devices be marked on the packages.

In response to the NPRM, RSPA received 28 comments. Eight commenters supported the proposal, citing the need to simplify the approval procedures and to reduce costs. Twelve commenters were in favor of the proposal, but expressed concern about the proposed requirement that packages of fireworks and novelties be marked with the EX-number assigned to the devices. The latter commenters stated that the proposed requirement generally would not impose a burden on manufacturers who normally pack several of the same devices, all with the same EX-number, in one package. However, they asserted, a burden would be imposed on distributors, wholesalers, and retailers who normally pack "custom" orders containing many different devices, all with different EX-numbers, in a package. One commenter stated that a typical order could contain as many as 30 different devices in one package, and the combination of devices would vary with each order. RSPA agrees with the commenters that, in some cases, marking the EX-number of all devices contained in a package may impose a burden on some persons. Accordingly, under this final rule, when more than five different fireworks or novelty devices are packed in the same package, the package need not be marked with more than five EX-numbers. Although all of the applicable EX-numbers will not be marked on the package, RSPA believes an acceptable level of hazard communication will be achieved.

Five commenters expressed other concerns about the proposal. The BOE recommended that the thermal stability

test be conducted by qualified, disinterested laboratories, not by fireworks manufacturers. The use of independent testing laboratories was also supported by two other commenters representing a fire department and an independent testing agency. Two other commenters, also representing fire departments, objected to the proposed rule on the basis of accidents resulting from public use of common fireworks. One of these commenters stated that the lack of testing by recognized laboratories would compromise public safety and perhaps be a disservice to the American people. This same commenter questioned whether a fireworks manufacturer would destroy or dismantle an entire lot of shells if the devices failed the testing.

RSPA shares the commenters' concern that an acceptable level of safety be maintained. Thermal instability is the principal hazard of these devices. Based on repeated testing and many years of safe shipping experience, the formulations identified in APA Standard 87-1 for use in fireworks are known to be thermally stable. Further, any application submitted to RSPA for approval of fireworks and novelties must contain a detailed description of the chemical composition of the device and information on the device's thermal stability when subjected to a test of 167 °F. for 48 hours. Therefore, all fireworks and novelty devices approved for transportation under this rule must have passed this test. When a device contains more than one component which may come into physical contact with another component in the finished device, RSPA is requiring that these components be placed in contact with each other during the thermal stability test in order to further ensure the stability of these devices. Paragraph 8 of APA Standard 87-1 places direct responsibility for providing correct thermal stability test data on the person submitting an application. RSPA believes that permitting manufacturers to perform the thermal stability testing is consistent with many other provisions in the HMR which place responsibility for compliance on the manufacturer or the person offering a hazardous material for transportation.

The National Fire Protection Association (NFPA) expressed its concern that some fireworks would no longer be examined by the BOE and BOM, and stated that it does not support the enhanced availability of fireworks for transportation when the devices' performance is unknown. The NFPA's comments fail to take into consideration that thermal stability testing of

fireworks and novelty devices would be conducted and certified by the manufacturer. A manufacturer may choose to have the testing performed by the BOE, BOM, or other test laboratory.

A commenter expressed concern that the prohibition in current § 173.100(r) on the use of plastic components in devices intended to produce audible effects had been broadened in APA Standard 87-1 to include devices designed to produce visible effects. This commenter stated that the use of soft polystyrene plastic actually increases the safety of these devices, and expressed concern that these devices would no longer meet the criteria for class C explosives. RSPA believes this commenter misunderstood the provisions in the APA Standard. Provision 3.6.2 in APA Standard 87-1 states: "*Prohibited Components*. No component of any common firework device or novelty may, upon functioning, project or disperse any metal, glass or brittle plastic fragments." Thus, APA Standard 87-1 prohibits the use of any "brittle plastic components" that may be projected or dispersed upon functioning. The standard contains no restrictions on the use of soft plastics in the construction of common fireworks and novelty devices.

The Air Line Pilots Association (ALPA) stated that they opposed HM-202 as presented. ALPA recommended that the BOE, BOM or RSPA maintain quality control over APA Standard 87-1 to ensure no changes are made to the standard without public notice and comment under the regulatory process system. RSPA notes that documents incorporated by reference in § 171.7 become an extension of the HMR themselves. The Director of the Federal Register must approve the material being incorporated by reference and, as with any rule change, RSPA would publish a notice in the *Federal Register* stating its intention to incorporate by reference any new document or revision of a publication referenced in § 171.7. Interested persons would be provided a opportunity to comment on the merits of incorporating a new or changed standard.

ALPA requested clarification on how the proposal on fireworks and novelties relates to the requirements for a certificate of competent or appropriate authority in U.S. variation 28 (US28) listed in the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). US28 requires approval of explosive articles or substances by the Director, OHMT, and this provision would remain unchanged. Under this

final rule, the Director, OHMT, would still approve all new fireworks.

ALPA also expressed concern that the HMR authorize common fireworks for transportation either by passenger aircraft or cargo aircraft, but in the ICAO Technical Instructions, only "Type D" fireworks are authorized for transportation on a passenger aircraft. ALPA stated that, in their opinion, shipments of fireworks should conform to the ICAO Technical Instructions. RSPA believes most common fireworks would probably fall under ICAO class 1.4, which was referred to as Type D in earlier editions of the ICAO Technical Instructions. RSPA is addressing the classification, packaging, and transportation of explosives in general under a separate rulemaking action, Docket-181A. A notice of proposed rulemaking will be published in the near future.

Review by Section

Section 171.7. APA's mailing address is added under paragraph (c)(33), and APA Standard 87-1 is incorporated by reference in paragraph (d)(29).

Section 171.8 A definition of "EX number" is added. The EX number is assigned by the Director, OHMT, and used to provide better identification of explosives.

Section 173.86. Paragraph (b) is revised for clarity and for consistency with other changes made in § 173.86. The latest edition of the Explosives Hazard Classification Procedures contained in DOD TB 700-2 is referenced in paragraph (b).

A new paragraph (j) is added which provides an exception from the requirement for an examination by the BOE or BOM for certain fireworks or novelties produced in conformance with APA Standard 87-1. For a device containing chemicals not addressed by APA Standard 87-1, the applicant must submit a report of examination by the BOE or BOM for each component contained within the device as presently required by § 173.86(b). When offered for transportation, packages containing fireworks or novelty devices must be marked with the EX-number assigned to each device in the package, however, when more than five different types of fireworks or novelties are packed in the same package, the package is required to be marked with at least five EX-numbers.

Sections 173.88 and 173.100. The definitions of Class B special fireworks in § 173.88(d) and of Class C common fireworks in § 173.100(r) are retained for the convenience of users of the HMR, as suggested by a commenter. Paragraphs

(t) and (x) of § 173.100 containing definitions of certain Class C novelties are removed and reserved. Paragraph (u), in § 173.100, is amended by removing the reference to a "toy smoke device" which is a novelty covered in the new standard.

Administrative Notices

Executive Order 12291

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Impact on Small Businesses

This regulation should result in a minor economic benefit to some small entities that are fireworks manufacturers, however, some retailers and distributors may experience minimal added costs. I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Executive Order 12612

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism") and have determined it has no substantial direct effect on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

Paperwork Reduction Act

The information collection burden remains the same. Information collection requirements contained in the current § 173.86 pertaining to new explosives have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control number, OMB No. 2137-0557.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR parts 171 and 173 are amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.7, paragraphs (c)(33) and (d)(29) are added to read as follows:

§ 171.7 Matter incorporated by reference.

(c) * * *

(33) APA: American Pyrotechnics Association, P.O. Box 213, Chestertown, Maryland 21620.

(d) * * *

(29) APA Standard 87-1 is titled, "Standard for Construction and Approval for Transportation of Fireworks and Novelties", September 1987 edition.

3. In § 171.8, a definition for "EX number" is added, in alphabetical sequence, to read as follows:

§ 171.8 Definitions and abbreviations.

EX number means a number, preceded by the prefix "EX-" which is assigned by the Director, OHMT, to identify a new explosive.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

5. In § 173.86, paragraph (b) is revised and paragraph (j) is added to read as follows:

§ 173.86 New explosive definitions; approval and notification.

(b) Except as otherwise provided in this section, no person may offer a new explosive for transportation unless:

(1) It has been examined and assigned a recommended shipping description and hazard class by the Bureau of Explosives, Association of American Railroads or the Bureau of Mines, U.S. Department of the Interior and has been classed and approved by the Director, OHMT;

(2) It has been examined, classed, and approved by the U.S. Army Materiel Development and Readiness Command

(DRCSF), Naval Sea Systems Command (NAVSEA 06H), or HQUSAF (IGD/SEV) when made by, or under the direction or supervision of, the DOD and tested in accordance with the Explosives Hazard Classification Procedures contained in DOD TB 700-2 (September 1982), (NAVSEAINST 8020.8 AFTO 11A-1-47, DSAR 8220.1) and the approval has been submitted to, and acknowledged by the Director, OHMT; or

(3) It has been examined, classed, and approved by the U.S. Department of Energy (DOE) when made by, or under the direction or supervision of, the DOE and tested in accordance with the Explosives Hazard Classification Procedures contained in DOD TB 700-2 (September 1982) and the approval has been submitted to, and acknowledged in writing by the Director, OHMT.

(j) Fireworks and Novelties.

Notwithstanding the provisions of paragraph (b) of this section, Class B and C fireworks and Class C novelties may be classed and approved by the Director, OHMT, without prior examination and offered for transportation, if—

(1) The fireworks or novelty devices are manufactured in accordance with the applicable requirements in APA Standard 87-1;

(2) A thermal stability test is conducted on the device by the BOE, and BOM, or the manufacturer. The test must be performed by maintaining the device, or a representative prototype of a large device such as a display shell, at a temperature of 167° F. (75° C.) for 48 consecutive hours. When a device contains more than one component, those components which could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer applies in writing to the Director, OHMT, following the applicable requirements in APA Standard 87-1, and is notified in writing by the Director, OHMT, that the fireworks or novelty device has been classed, approved, and assigned an EX-number. Each application must be complete, include all relevant background data and copies of all applicable drawings, test results, and any other pertinent information on each device for which approval is being requested. The manufacturer must sign the application and certify that the device for which approval is requested conforms to APA Standard 87-1 and that the descriptions and technical information contained in the application are complete and accurate. If the

application is denied, the manufacturer is notified in writing of the reasons for the denial. The Director, OHMT, may require that the fireworks or novelty be examined by an agency listed in paragraph (b)(1) of this section; and

(4) When offered for transportation, each package containing approved fireworks or novelties is marked with the EX-number for each device therein, except that when more than five different fireworks or novelty devices are packed in the same package, the package need not be marked with more than five of the EX-numbers.

6. In § 173.88, paragraph (d) is revised to read as follows:

§ 173.88 Definitions of Class B explosives.

(d) Special fireworks are devices designed primarily to produce visible or audible effects, or both visible and audible effects by combustion or explosion. Fireworks must be in a finished state, exclusive of mere ornamentation, and must be so constructed and packed that loose pyrotechnic composition will not be present in packages in transportation. Examples of special fireworks are toy torpedoes, railway torpedoes, some firecrackers and salutes (depending on pyrotechnic composition or quantity), exhibition display pieces, aeroplane

flares, illuminating projectiles, incendiary projectiles, incendiary bombs or incendiary grenades and smoke projectiles or smoke bombs fused or unfused containing expelling charges, but without bursting charges, flash powders in inner units not exceeding 2 ounces each, flash sheets in interior packages, flash power or spreader cartridges containing not over 72 grains of flash powder each (see § 173.60 for shipments made as low explosives), and flash cartridges consisting of a paper cartridge shell, small-arms primer, and flash composition, not exceeding 180 grains all assembled in one piece. See also definitions and standards found in APA Standard 87-1. (See § 173.100(r) for common fireworks.)

7. In § 173.100, paragraphs (t) and (x) are removed and reserved and paragraphs (r) and (u) are revised to read as follows:

§ 173.100 Definition of Class C explosives.

(r) Common fireworks are devices suitable for use by the public and designed primarily to produce visible or audible effects, or both visible and audible effects, by combustion. No component of the device which produces or is intended to produce an audible effect (other than a whistle)

shall contain pyrotechnic composition in excess of 2 grains in weight; nor shall such device or component, upon functioning, project or disperse any dangerous fragments such as metal, glass, or brittle plastic. See also definitions and standards found in APA Standard 87-1.

(t) [Reserved]

(u) Toy propellant devices consist of small paper or composition tubes or containers containing a small charge of slow burning propellant powder. These devices must be so designed that they will neither burst nor produce external flame except through the nozzle on functioning. Ignition elements, if attached, must be of a design examined by the Bureau of Explosives or the Bureau of Mines, and approved by the Director, OHMT.

(x) [Reserved]

Issued in Washington, DC, on September 15, 1989, under the authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-22498 Filed 9-22-89; 8:45 am]

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Federal Register

**Monday
September 25, 1989**

Part VII

The President

**Proclamation 6026—Emergency
Medical Services Week, 1989**

Monday
September 22, 1953

Part VII

The President

Proclamation 6026—Emergency
Medical Services Week, 1953

Presidential Documents

Title 3—

Proclamation 6026 of September 21, 1989

The President

Emergency Medical Services Week, 1989

By the President of the United States of America

A Proclamation

Many Americans are enjoying life today because at a time of crisis they received fast, professional assistance from emergency medical services (EMS) teams. The success of these teams is due to the people—physicians, nurses, paramedics, park rangers, fire fighters, police officers, and communications personnel—who work together to care for the injured and critically ill.

For some, working on an EMS team is a full-time career, while thousands of others work as volunteers. Whether full-time workers or volunteers, these men and women are highly trained professionals. They often perform their duties under difficult and even hazardous conditions. Many risk their lives to rescue accident victims. All of these people make emergency medical services a national success.

Despite this success, however, more than three-quarters of a million Americans a year still lose their lives as the result of medical emergencies. Emergency medical services teams across the country are working to improve this record. They are seeking to establish nationwide standards for training and delivery of care, to upgrade the skills of those already in service, and to devise new emergency techniques and equipment. In addition to these efforts, they are working to teach the general public what to do when confronted with a medical emergency.

We need to make our citizens aware of ways to prevent dangerous situations that can lead to serious injury. Americans also should learn specific actions they can take to reduce the severity of injuries and to help save lives.

It is appropriate that as a Nation we recognize and encourage our local emergency medical services teams in their efforts to improve emergency care services, and to improve our own ability to respond effectively in emergency situations. These efforts can only lead to a safer America.

To enhance public awareness of the important public service emergency medical services teams perform, the Congress, by House Joint Resolution 133, has designated the week beginning September 17, 1989, as "Emergency Medical Services Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 17 through September 23, 1989, as Emergency Medical Services Week. I call upon all Americans to observe the week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George H. W. Bush

[FR Doc. 89-22779

Filed 9-22-89; 11:26 am]

Billing code 3195-01-M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	\$10.00	Apr. 1, 1989
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

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⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁵ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

⁶ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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